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# General Assembly

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*Official Records*

**38**th plenary meeting
Thursday, 28 October 2010, 10 a.m.
New York

*President:* Mr. Deiss ..... (Switzerland)

*In the absence of the President, Mr. Francisco Carrión-Mena (Ecuador), Vice-President, took the Chair.*

*The meeting was called to order at 10.05 a.m.*

**Tribute to the memory of His Excellency Mr. David Thompson, Prime Minister of Barbados**

**The Acting President** (*spoke in Spanish*): Before proceeding to the items on our agenda, it is my sad duty to pay tribute to the memory of the late Prime Minister of Barbados, His Excellency David Thompson, who passed away on Saturday, 23 October. On behalf of the General Assembly, I request the representative of Barbados to convey our condolences to the Government and people of his country and to the bereaved family of His Excellency David Thompson.

I now invite representatives to stand and observe a minute of silence in tribute to the memory of His Excellency David Thompson.

*The members of the General Assembly observed a minute of silence.*

**The Acting President** (*spoke in Spanish*): I now give the floor to the representative of Malawi, who will speak on behalf of the African Group.

**Mr. Bowler** (Malawi): It is with a heavy heart that, I, on behalf of the African Group, His Excellency Ngwazi Professor Bingu Wa Mutharika, President of the Republic of Malawi and Chairperson of the African Union, my fellow Ambassadors and indeed on my own behalf, express Africa's heartfelt condolences to the family of our dear brother and friend, His Excellency the Honourable David Thompson, Prime Minister of Barbados.

It was only in July, in Kampala, that the African Union hosted representatives from the Caribbean at its Fifteenth Summit. It is therefore unimaginable that today, three months later, we bid farewell to a dear brother, who stood and spoke so passionately of Afro-Caribbean bonds.

Premier Thompson's death is a loss not only to the people of Barbados, but also to the people of Africa and the Caribbean. It is a tragedy to lose someone so young. Premier Thompson was Prime Minister of Barbados at such a young age and sadly departed at a time when he was involved in so many world affairs. So much was on the agenda between Africa and the Caribbean through his initiatives, and it is a tribute to his legacy that we who still survive should fulfil his vision.

Africa has lost a true friend, and Africa will miss him very much. Our thoughts and prayers are with his dear wife and three daughters, as well as the people of Barbados and the whole Caribbean region. May his soul rest in peace.

**The Acting President** (*spoke in Spanish*): I now call on the representative of China, who will speak on behalf of the Asian States.

**Mr. Wang Min** (China) (*spoke in Chinese*): We learned with sadness of the untimely death of the Prime Minister of Barbados, The Honourable David

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Thompson. As the Chairman of the Asian Group, I would like to extend, on behalf of all the members of the Group, our sincere sympathy and condolences to his family and the Government and people of Barbados.

Prime Minister Thompson was an outstanding statesman. Together with the people of Barbados, he made tremendous efforts to overcome the severe impact of the international financial crisis and achieved great progress in building their country. Under his leadership, Barbados also played a very positive role in promoting political solidarity and regional cooperation in the Caribbean Community (CARICOM).

Prime Minister Thompson demonstrated his long-standing commitment to the advancement of the purposes and principles of the United Nations. As a member of the High-level Panel on Global Sustainability, he made a great contribution to the United Nations and the international community in tackling climate change and ensuring sustainable development.

The death of Prime Minister Thompson is a great loss, not only to the people of Barbados and CARICOM but also to the entire United Nations. We will never forget him.

**The Acting President** (*spoke in Spanish*): I now call on the representative of Croatia, who will speak on behalf of the Eastern European States.

**Mr. Vilović** (Croatia): On behalf of the Eastern European Group of States and in my personal capacity, I have the sad duty to extend our heartfelt condolences to the family, the people and the Government of Barbados on the death of their Prime Minister, His Excellency Mr. David Thompson.

During his short term as the Prime Minister of Barbados, Mr. Thompson demonstrated strong leadership within the Caribbean Community family and was firmly committed to the region's goals. His love for the people and country of Barbados was unconditional. As a leader with a mission, his legacy — which extends far beyond that of a Prime Minister and the finite margins of this world — will remain with us.

Although Mr. Thompson's potential as an outstanding leader of Barbados and within the Caribbean region was unjustly cut short, we can all benefit from the vision of this talented individual and his leadership, integrity and friendship, which was inspirational to so many.

The Eastern European Group hopes that Mr. Thompson's leadership will be continued in the future to benefit the countries of the Caribbean region and the world as a whole. All our thoughts remain with the people of Barbados in their time of mourning.

**The Acting President** (*spoke in Spanish*): I now call on the representative of Trinidad and Tobago, who will speak on behalf of the Latin American and Caribbean States.

**Mr. Charles** (Trinidad and Tobago): I have the sad duty to speak on behalf of the Group of Latin American and Caribbean States as the General Assembly pays tribute to The Honourable David John Howard Thompson, former Prime Minister of Barbados.

Prime Minister Thompson was a very outstanding lawyer, orator and skilled debater. He was the protégé of Barbados' founding Prime Minister, the late Errol Walton Barrow. At the young age of 25, he succeeded his mentor as the parliamentary representative of the rural St. John constituency. He represented that district from 1987 until his untimely passing last Saturday. An affable personality, he was highly regarded by his constituents, who viewed him as a loving and compassionate individual, and one who was always accessible.

Prime Minister Thompson was very committed to the transformation of his country during a very difficult world economic and financial crisis. But he never lost faith in the ability of his people to overcome those challenges, challenges that were largely driven by external forces. As an integrationist, he championed the cause of regional integration and the full and effective implementation of the Caribbean Community Single Market and Economy. However, he envisioned an integration movement that would eventually embrace the wider Caribbean region, in partnership with Latin America.

Our region has lost one of its young, brilliant minds, a member of the new generation of leaders charged with the responsibility to continue to build our Caribbean civilization as an integral and equal part of the international community.

The untimely passing of any leader is always marked with sadness and outpourings of grief.

However, it is even more profound when that leader dies at the relatively young age of 48. More difficult to comprehend is a situation where that leader was revered by his people and displayed great passion and love for his country and region.

We, the members of the Group of Latin American and Caribbean States, while mourning the loss of Prime Minister Thompson, are consoled by the fact that although he was at the helm of his country's Government for little more than two years, he made a significant contribution to his country and region. We are confident that the footprints left by Prime Minister Thompson will be used as a beacon by successive generations in their quest to make a meaningful contribution to the development of Barbados and the region.

On behalf of the Group of Latin American and Caribbean States, I wish to extend my condolences to the delegation of Barbados, the family of the late Prime Minister Thompson and the Government and people of Barbados. May this outstanding Caribbean visionary rest in peace.

**The Acting President** (*spoke in Spanish*): I now give the floor to the representative of Spain, who will speak on behalf of the Group of Western European and other States.

**Mr. Yáñez-Barnuevo** (Spain) (*spoke in Spanish*): On behalf of the Group of Western European and other States, and also on behalf of my country and myself, I wish to convey to the people and Government of Barbados our deepest condolences for the loss of their Prime Minister, Mr. David John Howard Thompson. Mr. Thompson was an important figure in his country and will be remembered for, among many other things, promoting community action and propelling integrated regional action in the Caribbean, as well as his contribution to the tasks of the United Nations, particularly with regard to development and global sustainability.

Prime Minister David Thompson was a distinguished politician as well as an eminent lawyer. After receiving his law degree from the University of the West Indies, he worked as a lawyer and law professor for many years, until his election to Parliament in 1987. He was appointed Minister of Community Development and Culture in 1991, and Minister of Finance in 1992. After leading the opposition between 1994 and 2003, and after a brief period in which he returned to the bar, he was appointed Prime Minister in 2008.

The members of the Group of Western European and other States wish to voice our appreciation and gratitude for the significant contribution Prime Minister David Thompson made, not just to his country but to the region and the entire international community. We would like to express to his family and the whole people of Barbados our affection and sincere condolences. Our thoughts and sympathies are with them at this difficult time.

**The Acting President** (*spoke in Spanish*): I now give the floor to the representative of Barbados.

**Mr. Goddard** (Barbados): I wish to thank you, Mr. Vice-President, and to commend your graciousness in arranging for the Assembly to honour the late beloved Prime Minister of Barbados, The Honourable David John Howard Thompson, Queen's Counsel and Member of the Parliament of Barbados. I also wish to thank my colleagues, who spoke so eloquently, kindly and movingly in tribute to the life, contributions and achievements of the late Prime Minister. On behalf of the Thompson family, the Government of Barbados and the people of Barbados, I acknowledge the many condolences received. All this I do with profound pain and sincere humility.

I believe it is appropriate that I shed some light on the life of David John Howard Thompson and on his achievements and contributions to Barbados, and, of course, to the wider Caribbean and the world.

He was born in London on 25 December 1961, but grew up and was schooled in Barbados. He was awarded one of our highest academic honours, a Barbados Exhibition, while at Combermere School. He subsequently returned to his alma mater to teach for a short period before entering the law faculty at the Cave Hill campus of the University of the West Indies, graduating with honours in 1984. He obtained his legal education certificate from the Hugh Wooding Law School in Trinidad in 1986. It was at Combermere School that his debating and public-speaking skills were honed, where his insatiable appetite for reading developed, and where his wide knowledge, self-confidence and emerging maturity were publicly noticed.

Returning to Barbados in 1986, he joined the law firm headed by Errol Barrow, another great and revered

Barbadian, who led Barbados to independence in 1966. It was at this time, between 1986 and 1988, that David Thompson was a part-time law tutor at his old law faculty.

He was elected to serve as President of the youth arm of the Democratic Labour Party between 1980 and 1982. In 1987, following the death of Prime Minister Errol Barrow, David Thompson successfully contested the constituency of St. John, which he continued to represent until his death. David Thompson was appointed to his first Cabinet position in 1991, as Minister of Community Development and Culture. He held the portfolio of Minister of State in the Ministry of Finance in 1991 and 1992 and of Minister of Finance in 1993 and 1994.

The Democratic Labour Party lost the Government and Thompson became leader of the opposition, a position he held between 1994 and 2003. After subsequently losing two consecutive elections, he relinquished the post of opposition leader in 2003, returning to the helm of the party in 2006 to capture the Government in January 2008. He became Prime Minister of Barbados at age 46.

Along with his wide-ranging portfolio as Prime Minister and Minister of Finance, Economic Affairs and the Civil Service, he also held lead responsibility for the implementation of the Caribbean Single Market and Economy in the Caribbean Community quasi-cabinet.

It was not only in public service and politics that David John Howard Thompson excelled. He headed a substantial legal practice whose specialties include insurance, property, international business and corporate law. In addition, he undertook consultations across the region and beyond, including consultations for the Caribbean Law Institute, the Caribbean Community Secretariat, the Commonwealth Secretariat and the Commonwealth Parliamentary Association.

The late Prime Minister was affiliated with a range of civic, cultural and sporting organizations.

David Thompson endeared himself to the people because he was firmly grounded. There was nothing about him that was artificial, contrived or insincere. Despite his many achievements, he remained humble, approachable and possessed of an inimitable dry wit.

Despite the brevity of his tenure as Prime Minister, his legacy would have to include the following. He promoted the family as the basic and crucial social unit with his Family First project. He conceived and promoted the Friends of Barbados programme, a project aimed at mobilizing the goodwill, skills and financial resources of the Barbadian diaspora to the collective benefit of the island. He promoted HELP, meaning "housing every last person", a housing solutions initiative. He introduced free bus transportation for schoolchildren and summer camp for school-age children, including preschoolers. He championed the cause of the physically challenged and the cause of youth. He initiated the transformation of the Barbados economy into a green economy. Finally, he drafted his wife, a professionally qualified physical educationist, to spearhead the fight against non-communicable diseases through lifestyle changes, especially in relation to exercise and diet.

This sketch provides a background, a context for the outpouring of grief and the sense of disappointment and loss among the people of Barbados, as well as among our brothers and sisters across the Caribbean and indeed the wider international community on the death of the Prime Minister. He was widely respected, greatly admired and deeply loved. His death evoked expressions of sorrow, regret and disbelief from every sector and corner of Barbados as well as the Caribbean region.

The late Prime Minister Thompson was a staunch believer in multilateralism and the United Nations. He also believed that small States were the glue that kept the fabric of the multilateral system together and that no effort should be spared to defend the principles upon which this great Organization was founded.

It was in this spirit that he graciously accepted the invitation from the Secretary-General to serve on the High-level Panel on Global Sustainability. He shared the vision of the Secretary-General that a new paradigm for sustainable growth and prosperity was required to ensure environmental sustainability and social development. The late Prime Minister Thompson was prepared to offer the Barbados model as an example for developing countries.

To be cut down in the prime of life, to pass away while at your professional zenith, to succumb while at the pinnacle of your political achievement would to some appear as mere mockery of legitimate expectations of a life. Naturally, such a situation

conjures up emotions of regret, sadness and disappointment. Let us resign ourselves to, and take solace in, accepting that the deeds of the Almighty are not to be questioned.

In closing, I respectfully suggest that in the death of Prime Minister Thompson the world has lost an ardent defender of democracy, human rights, social progress for all and multilateralism. The Caribbean has lost a committed regionalist. Barbados has lost a leader of great promise. Margaret and Howard have lost a loving son. Siblings have lost an exemplary mentor. Worst of all, his wife Mara and daughters Osha, Misha and Oya-Marie, have lost the centre of their world. I have lost a close neighbour and a true friend. May he rest in peace — gone but not forgotten.

**Agenda item 70**

**Report of the International Court of Justice**

**Report of the International Court of Justice (A/65/4)**

**Report of the Secretary-General (A/65/309)**

**The Acting President** (*spoke in Spanish*): The General Assembly will now consider the report of the International Court of Justice covering the period from 1 August 2009 to 31 July 2010, which is contained in document A/65/4. May I take it that the General Assembly takes note of the report of the International Court of Justice?

*It was so decided.*

**The Acting President** (*spoke in Spanish*): In connection with this agenda item, the Assembly also has before it a report of the Secretary-General on his Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice, which has been circulated in document A/65/309.

I call upon Mr. Hisashi Owada, President of the International Court of Justice.

**Mr. Owada**: Before starting my presentation today, I wish to associate myself, on behalf of the International Court of Justice, with the tributes and condolences expressed by the representatives of different regional groups at the loss of the Prime Minister of Barbados, Mr. David Thompson.

It is an honour and privilege for me to address the General Assembly for the second time as the President of the International Court of Justice and to present the report of the Court for the period from 1 August 2009 to 31 July 2010 (A/65/4).

I wish to take this opportunity to congratulate Mr. Deiss on his election as President of the Assembly at its sixty-fifth session, as well as the Vice-Presidents of the Assembly at this session on their respective elections. I wish them all every success in their offices.

As is traditional, I would like to turn to an overview of the judicial activities of the International Court of Justice during the past year. The Court is gratified to note that the international community of States continues to place its trust in the Court with respect to a wide variety of legal disputes.

Since I addressed the Assembly last October (see A/64/PV.30), the Court has rendered one judgment on the merits, in the case concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, and has given one advisory opinion, in the case concerning the *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*. It also has handed down an order on the admissibility of a counterclaim in *Jurisdictional immunities of the State (Germany v. Italy)* and an order discontinuing proceedings in *Certain Questions concerning diplomatic relations (Honduras v. Brazil)*.

Moreover, the Court has been engaging in hearings and deliberations in a number of cases, including the case concerning *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)* and the case concerning *Territorial and Maritime Dispute (Nicaragua v. Colombia)*.

These cases have involved States from all regions of the world, and the subject matter has been wide-ranging, extending from classical issues such as diplomatic protection and sovereign immunity to issues of contemporary relevance such as international environmental law.

As members will no doubt note, in one case, concerning the *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, the Court was requested by the General Assembly to give an advisory opinion. This case received active and lively attention from the United

Nations and its Member States, including many of the States represented in this Hall today. The Court is grateful for the cooperation it received from the Secretariat and the Member States that participated in the proceedings at the written and oral stages.

In the autumn of 2009, following my address to the Assembly, the Court continued its deliberations in a great number of cases filed before it. As a result of those deliberations, the Court's first decision during the period under review was reached on 20 April 2010, when the Court rendered its judgment in *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*. The case involved the planned construction, authorized by Uruguay, of the Celulosas de M'Bopicuá S.A. (CMB) pulp mill and the construction and commissioning, also authorized by Uruguay, of the Orion pulp mill, on the River Uruguay.

Argentina argued that the authorizations to build, the actual construction and, where applicable, the commissioning of the mills and their associated facilities constituted violations of obligations arising under the Statute of the River Uruguay, a bilateral treaty signed by the parties on 26 February 1975. It was alleged by the applicant that those acts had been taken by Uruguay in violation of the mechanism for prior notification and consultation prescribed by articles 7 to 13 of the Statute — that is to say, procedural violations. Those allegations were made in respect of both the CMB mill, whose construction on the River Uruguay was ultimately abandoned, and the Orion mill, which is currently in operation.

Argentina further contended, on the subject of the Orion mill and its port terminal, that Uruguay had also violated three provisions of the Statute that related to the protection of the river environment. It was Argentina's contention that the industrial activities authorized by Uruguay had, or would have, an adverse impact on the quality of the waters of the river and the area affected by it and had caused significant damage to the quality of the waters of the river and significant transboundary damage to Argentina — that is to say, substantive violations.

Uruguay, for its part, argued that it had violated neither the procedural nor the substantive obligations laid down by the Statute.

In the light of the extensive scientific evidence at issue in the case, the question arose of the precise status of scientific experts. That issue came up in particular because certain scientific experts presented evidence to the Court in the oral hearings as counsel rather than as experts or witnesses. On that issue, the Court stated, in paragraph 167 of its judgment:

> "Regarding those experts who appeared before it as counsel at the hearings, the Court would have found it more useful had they been presented by the Parties as expert witnesses under Articles 57 and 64 of the Rules of Court, instead of being included as counsel in their respective delegations. The Court indeed considers that those persons who provide evidence before the Court based on their scientific or technical knowledge and on their personal experience should testify before the Court as experts, witnesses or in some cases in both capacities, rather than as counsel, so that they may be submitted to questioning by the other Party as well as by the Court."

Another issue raised in the context of the scientific evidence was that of how the Court should determine the authority and reliability of the studies and reports submitted by the parties, which were sometimes prepared by experts and consultants retained by the respective parties, and at other times prepared by outside experts, such as the International Finance Commission. Assessing those expert reports could be particularly complicated because they often contain conflicting claims and conclusions.

Ultimately, the Court concluded that for the purposes of the judgment, it did not find it necessary to enter into a general discussion on the relative merits, reliability and authority of the studies prepared by the experts and consultants of the parties. On that point the judgment concluded, in paragraph 168, that

> "despite the volume and complexity of the factual information submitted to it, it is the responsibility of the Court, after having given careful consideration to all the evidence placed before it by the Parties, to determine which facts must be considered relevant, to assess their probative value, and to draw conclusions from them as appropriate".

As the Court is expected regularly to consider environmental cases in the future, it will increasingly have to consider complex scientific evidence, and in some cases it may find it difficult to come to a conclusion on such material without the assistance of

expert testimony. In that regard, I might recall a provision in the Resolution concerning the Internal Judicial Practice of the Court (1976), which in its article I states:

> "After the termination of the written proceedings and before the beginning of the oral proceedings, a deliberation is held at which the judges exchange views concerning the case, and bring to the notice of the Court any point in regard to which they consider it may be necessary to call for explanations during the course of the oral proceedings."

Such deliberation could be more fruitful in highly technical cases if it could afford an opportunity for the Court to discuss the technical ideas of the issue involved, with the assistance, if appropriate, of objective experts, so that the Court could develop the most accurate account of what further material it would like the parties to produce and whether it would be useful for the Court to hear experts at the oral hearings.

As far as the procedural violations are concerned, the Court noted that Uruguay had not informed the Administrative Commission of the River Uruguay of the projects as prescribed in the Statute. The Administrative Commission of the River Uruguay is a body established under the Statute for the purpose of monitoring the river, including assessing the impact of proposed projects on the river. It is known by the Spanish acronym "CARU". The Court concluded that by not informing CARU of the planned works before the issuing of the initial environmental authorizations for each of the mills and for the port terminal adjacent to the Orion mill and by failing to notify the plans to Argentina through CARU, Uruguay had violated the 1975 Statute.

With respect to the substantive violations, the Court found, based on a detailed examination of the parties' arguments, that there was

> "no conclusive evidence in the record to show that Uruguay has not acted with the requisite degree of due diligence or that the discharges of effluent from the Orion (Botnia) mill have had deleterious effects or caused harm to living resources or to the quality of the water or the ecological balance of the river since it started its operations in November 2007".

Consequently, the Court concluded that Uruguay had not breached substantive obligations under the Statute. In addition to that finding, however, the Court emphasized that under the 1975 Statute, the parties have a legal obligation to continue their cooperation through CARU and to enable it to devise the necessary means to promote the equitable utilization of the river, while protecting its environment.

On 6 July 2010, the Court handed down its order on the admissibility of a counterclaim submitted by Italy in the case concerning *Jurisdictional Immunities of the State (Germany v. Italy)*. This case, which was filed by Germany in December 2008, concerns a dispute over whether Italy has violated the jurisdictional immunity of Germany. The applicant argued that the respondent, by allowing civil claims against Germany in Italian courts on the alleged ground of violations of international humanitarian law by the German Reich during the Second World War, committed an internationally wrongful act against the applicant.

In its counter-memorial filed on 23 December 2009, Italy presented a counterclaim with respect to the question of the reparation owed to Italian victims of grave violations of international humanitarian law committed by forces of the German Reich. In its order of 6 July 2010 on the admissibility of that counterclaim, the Court concluded that the dispute that Italy intended to bring before the Court by way of its counterclaim related to facts and situations existing prior to the entry into force, as between the parties, of the European Convention for the Peaceful Settlement of Disputes of 29 April 1957, which formed the basis of the Court's jurisdiction. For that reason, the Court gave a decision stating that the counterclaim did not come within its jurisdiction ratione temporis as required by article 80, paragraph 1, of the Rules of Court, and was thus inadmissible.

On 22 July 2010, the Court rendered its advisory opinion on the *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*. As I mentioned earlier, this advisory opinion was given in response to the request made by the General Assembly in its resolution 63/3 of 8 October 2008, that the Court provide an opinion on the following question:

"Is the unilateral declaration of independence by the Provisional Institutions of Self-Government of Kosovo in accordance with international law?"

A considerable number of States from all regions of the world took part in the case. In all, 36 Member States of the United Nations filed written statements on the question, and the authors of the unilateral declaration of independence filed a written contribution. Fourteen States offered their written comments on the written statements by States and the written contribution by the authors of the declaration of independence. The authors of the declaration of independence also submitted a written contribution regarding the written statements by States. In the public hearings stage, 28 States and the authors of the unilateral declaration of independence participated in the proceedings. The procedure was thus truly a global one and represented an important form of interaction between the General Assembly and the Court.

In its advisory opinion delivered on 22 July this year, the Court concluded that the declaration of independence of Kosovo, adopted on 17 February 2008 did not violate international law.

In reaching its conclusion, the Court first addressed the question of whether it possessed jurisdiction to give the advisory opinion requested by the General Assembly. The position the Court reached on that preliminary question was that the question asked was referred to the Court by the General Assembly, which is authorized to request the Court to give an advisory opinion on any legal question under Article 96, paragraph 1, of the Charter, and that because that question was a legal question within the meaning of Article 96 of the Charter and Article 65 of its Statute, it had jurisdiction to give an advisory opinion in response to the request.

The Court then dealt with the question, raised by a number of participants on various grounds, as to whether the Court should nonetheless decline, as a matter of discretion, to exercise its jurisdiction to give an advisory opinion. After detailed examination of various aspects of the issues involved in this question, the Court concluded that in light of its established jurisprudence, there were "no compelling reasons for it to decline to exercise its jurisdiction" (see A/64/881, para. 48).

In addressing the question referred to it by the General Assembly, the Court carefully examined the precise scope and meaning of the question put to it. In particular, with regard to the reference to the Provisional Institutions of Self-Government of Kosovo in the request for an advisory opinion formulated by the General Assembly, the Court stated that it was part of its judicial function to decide, proprio motu, whether the declaration of independence had been promulgated by a body of that designation or by any other entity. The Court also concluded that the question that it had been asked to answer amounted to a strictly circumscribed question of whether a rule of international law prohibited a declaration of independence, and not the question of whether international law conferred a positive entitlement upon Kosovo to declare independence.

It was on the basis of that careful circumscription of the issues presented to the Court that the Court assessed whether the declaration of independence was in accordance with general international law. It noted that State practice during the eighteenth, nineteenth and early twentieth centuries points clearly to the conclusion that international law contained no prohibition of declarations of independence.

The Court declared that the scope of the principle of territorial integrity is confined to the sphere of relations between States. It further analysed three Security Council resolutions that were cited by some participants as evidence for the proposition that the declaration of independence was prohibited by international law, and concluded that no general prohibition of declarations of independence could be deduced from them, since the Security Council resolutions in question were addressed to specific situations where declarations of independence had been made in the context of an unlawful use of force or a violation of jus cogens norm.

The Court thus concluded that the declaration of independence as such was not prohibited by general international law.

The Court then analysed whether the declaration of independence of Kosovo in question was in accordance with Security Council resolution 1244 (1999) of 10 June 1999. It determined that the object and purpose of resolution 1244 (1999) was to form "a temporary, exceptional legal regime which ... superseded the Serbian legal order ... on an interim basis" (*ibid., para. 100*).

As such, the resolution constituted a legal framework in relation to the institutions established by the Constitutional Framework under resolution 1244 (1999). The question to be examined, therefore, was whether the authors of the declaration of independence could act outside that Framework. The Court, in this context, carefully analysed whether the authors of the declaration of independence were the Provisional Institutions of Self-Government of Kosovo, as mentioned in the request from the General Assembly, or otherwise.

Analysing the content and form of the declaration, as well as the context in which it was declared, the Court came to the conclusion that the authors of the declaration of independence were not — were not — the Provisional Institutions of Self-Government but, rather, "persons who acted together in their capacity as representatives of the people of Kosovo outside the framework of the interim administration" (*ibid., para. 109*).

On that basis, the Court came to the conclusion that the declaration of independence of Kosovo did not violate resolution 1244 (1999) on the following two grounds. First, the resolution and the declaration of independence operate on a different level, since resolution 1244 (1999) remains silent as to the final status of Kosovo, whereas the declaration of independence was an attempt to determine that final status. Secondly, resolution 1244 (1999) imposes only very limited obligations on non-State actors, but none of those obligations contains a general prohibition on Kosovo to declare independence.

Since the authors of the declaration of independence were not the Provisional Institutions of Self-Government of Kosovo, the authors of the declaration of independence were not bound by the Constitutional Framework established under resolution 1244 (1999) and thus their declaration of independence had not violated that Framework. Consequently, the Court concluded that the adoption of the declaration of independence did not violate any applicable rule of international law.

In addition to the cases that I have just summarized, the Court also held, during the period covered by this annual report, oral proceedings and deliberations in the case concerning *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*. That case concerns claims for diplomatic protection made by Guinea on behalf of Mr. Ahmadou Sadio Diallo, a Guinean businessman who alleges that he was unlawfully arrested, detained and expelled from the Democratic Republic of the Congo, where he had been living and conducting business for over 30 years, since 1962.

The Court had already disposed of the issue of preliminary objections raised by the respondent in its 2009 judgment. The public hearings it held in April this year thus related to the merits of the case. The Court is now deliberating on its judgment on the merits of this case, and the judgment will be rendered in due course.

Another case that the Court had to deal with during the period covered by the report is the case between Honduras and Brazil. The Assembly may recall that, in my address last year (see A/64/PV.30), I mentioned that the Court had received just one day earlier an application instituting proceedings by the Republic of Honduras against the Federative Republic of Brazil relating to legal questions concerning diplomatic relations and associated with the principle of non-intervention in matters which are essentially within the domestic jurisdiction of any State.

This case was unique in that the Court was faced with conflicting contacts coming from competing governmental authorities, both purporting to be acting on behalf of Honduras in a situation of political uncertainty. Immediately after the application of 28 October 2009 was made in the name of the Government of Honduras as represented by its ambassadors in the Netherlands and France, allegedly acting as agents and co-agents, another letter of the same date, in the name of the Minister for Foreign Affairs of the Republic of Honduras, stated that the agents and co-agents of the Republic of Honduras who had filed the first application of 28 October had been relieved of their duties.

In spite of that notice, however, a subsequent letter of 2 November — signed by one of the agents who had reportedly been relieved of his duties according to the letter from the Minister for Foreign Affairs — informed the Court that "the Government of the Republic of Honduras ... [had] appointed ... to act as its Agent" the other of the agents who had been relieved of their duties in that previous letter. Under those unclear circumstances, the Court decided that no

further action would be taken in the case until the situation in Honduras was clarified.

The matter was finally settled when the Court received a letter dated 30 April 2010, in which the Minister for Foreign Affairs of the Republic of Honduras informed the Court that the Honduran Government was "not going on with the proceedings initiated by the Application filed on 28 October 2009 against the Federative Republic of Brazil" and that "insofar as necessary, the Honduran Government accordingly [was] withdraw[ing] this Application from the Registry".

In the light of that communication, which put an end to the complex situation, the Court, in its order of 12 May 2010, while noting that the Brazilian Government had not in the meantime taken any steps in the proceedings in the case, took an official decision to record the discontinuance by the Republic of Honduras of the proceedings it had instituted and ordered the removal of the case from the General List.

In addition to those cases that the Court has dealt with, three new contentious cases were filed in the relevant period, and the Court also received one new request for an advisory opinion.

First, in December 2009, the Kingdom of Belgium initiated proceedings against the Swiss Confederation in the case concerning *Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters*, which relates primarily to the interpretation and application of the Lugano Convention of 16 September 1988 on jurisdiction and the enforcement of judgments in civil and commercial matters. In particular, the case involves a dispute between the main shareholders in Sabena, the former Belgian airline. Belgium argues that Switzerland is breaching the Lugano Convention and other international obligations by virtue of the decision of its courts to refuse to recognize a decision in a Belgian court on the liability of the Swiss shareholders to the Belgian shareholders, including the Belgian State and three companies owned by the Belgian State. The parties are now in the process of preparing their written pleadings.

Secondly, in April 2010, the Court received a request for an advisory opinion from the International Fund for Agricultural Development (IFAD), a specialized agency of the United Nations, concerning a judgment rendered by the Administrative Tribunal of the International Labour Organization (ILO) requiring IFAD to pay a staff member two years' salary plus moral damages and costs for the abolishment of the post of that staff member.

That request for an advisory opinion falls within the framework of a special procedure under which the Court is given the power of engaging in the review of judgments of administrative tribunals of the United Nations family in the form of an advisory opinion — a procedure that has given rise to four advisory opinions since 1946.

The Court has set 29 October 2010 as the time limit for the submission of written statements by IFAD and its member States entitled to appear before the Court, the States parties to related United Nations conventions entitled to appear before the Court, and those specialized agencies of the United Nations that have made a declaration recognizing the jurisdiction of the ILO Administrative Tribunal.

Thirdly, at the end of May 2010, Australia initiated proceedings against Japan concerning

> "Japan's continued pursuit of a large-scale program of whaling under the Second Phase of its Japanese Whale Research Program under Special Permit in the Antarctic ('JARPA II'), in breach of obligations assumed by Japan under the International Convention for the Regulation of Whaling ('ICRW'), as well as its other international obligations for the preservation of marine mammals and the marine environment".

Australia alleges in its application that whales caught in the JARPA II programme are ultimately being placed on commercial sale and that the scale of whaling under the programme is in fact bigger than existed before the moratorium on commercial whaling under the International Convention for the Regulation of Whaling, in violation of certain international obligations under the international conventions that it cites in its application. The parties are now preparing their written pleadings.

Finally, on 20 July 2010, Burkina Faso and Niger jointly submitted to the Court a territorial dispute relating to the boundary between them, pursuant to a special agreement signed in Niamey on 24 February 2009, which entered into force on 20 November 2009. In the special agreement, the Court is requested to determine the course of the boundary between the two countries from Tong-Tong to the beginning of the

Botou bend. The parties have also requested the Court to take cognizance of the parties' agreement to follow the recommendations of a joint technical commission with regard to two other sectors of their common border.

As the Assembly can see, all these different cases raise a great variety of divergent issues of public international law. I can say that the work of the Court truly reflects the broad substantive scope that international law now covers.

As I stated at the beginning of this presentation, the international community of States continues to place its trust in the Court to handle a wide variety of legal disputes coming from all geographical regions of the world. The Court's docket of pending cases has been consistently increasing in number in recent years, now standing at 16 cases involving approximately 30 different States.

Moreover, the coverage of the cases that the Court is entrusted to deal with is also broader in scope than ever, with each case presenting distinct legal and factual elements. The increased recourse by States to the International Court of Justice for the judicial settlement of their disputes testifies to the growing consciousness among political leaders of those States of the importance of the rule of law in the international community.

Indeed, it must be emphasized that the importance of the rule of law in the contemporary international community is growing rapidly, against the backdrop of the deepening process of globalization. It is no exaggeration to say that the rule of law now permeates every aspect of the activities of the United Nations, from the maintenance of peace and security to the protection of human rights, and from the fight against poverty to the protection of the global environment, including the case of climate change.

While every part of the Organization has a role to play in the promotion of the rule of law, the Court, as the principal judicial organ of the United Nations, is expected to play a central role in this area. By working to strengthen the rule of law, the Organization can strengthen its moral fibre which is so essential to uniting an increasingly interconnected world. In this situation, the Court greatly appreciates the trust that Member States have continued to place in its work.

I wish in particular to express my deep and sincere gratitude to the General Assembly and its member States in this context for the recent decision to provide the Court with additional P-2 legal officers so that now each judge can benefit from the assistance of a dedicated law clerk. I am particularly happy to report that the new law clerks have been selected through a most rigorous recruitment process in which the Court received no less than 1,600 applications for 6 vacancies, and they have just taken up their functions at the beginning of September 2010.

Those additional staff members provide essential assistance to the Court, which, with its rapidly increasing workload, badly needs support to be able to continue to produce the quality work that is expected of it. That added research support not only helps the Court as it deals with its increased caseload, but also assists it enormously in strengthening the high degree of collegiality and confidentiality between Chambers within the Court, as a collegial body of judges who are dedicated to the cause of promoting justice in the contemporary world. On behalf of the entire Court, let me express our deep appreciation for that assistance.

Looking ahead, I pledge that the Court will continue to do its utmost to achieve its mandate, as set out under the Charter and the Statute, in assisting the Member States in the pacific settlement of their disputes. It is my hope that Member States will continue to place their trust in the Court, not only with the submission of new disputes, but also through acceptance of the Court's jurisdiction, be it through a declaration under Article 36, paragraph 2, of the Statute, or through the signature of the many multilateral treaties which now contain compromissory clauses that refer disputes as to the interpretation or application of those treaties to the Court.

Let me close my brief presentation of recent activities of the International Court of Justice by thanking the Assembly for this opportunity to address it today. I wish the Assembly a productive sixty-fifth session.

For our part, the Court will continue to dedicate its fullest efforts to the promotion of the rule of law in the international community at the international level and the peaceful settlement of disputes among Member States of the United Nations.

**The Acting President** (*spoke in Spanish*): I thank the President of the International Court of Justice.

**Mr. Rönquist** (Sweden): I have the honour to speak on behalf of the five Nordic countries: Finland, Iceland, Norway, Denmark and my own country, Sweden.

Let me first thank President Owada for his presentation of the report of the International Court of Justice (A/65/4). The Nordic countries attach great importance to the Court as the principal judicial organ of the United Nations. The peaceful resolution of disputes is fundamental for the maintenance of international peace and security. The Court has fulfilled that task during the past 65 years and has acquired a solid reputation as an impartial institution with the highest legal standards, in accordance with its mandate under the Charter of the United Nations.

The submission of a dispute to the Court must not be regarded as a hostile act, but rather as an act that reflects the obligation of States to settle their disputes peacefully. In that context, the Nordic countries recall the recommendation of the 2005 World Summit that States not yet having done so consider accepting the jurisdiction of the Court, in accordance with its Statute. We welcome the attention given to that issue during the meeting of legal advisers this week, including in relation to the possibility of reconsidering reservations to Article 36 of the Court's Statute.

The International Court of Justice is the cornerstone of international legal order. Its mere existence, as well as its practice, has strengthened the rule of law and has contributed to the prevention and resolution of international disputes. In support of the obligation to settle disputes peacefully, the increasing caseload before the Court is encouraging. The many different geographical regions from which those cases appear are also a testament to the growing recognition of the Court's vital role in that regard.

The report of the Court clearly illustrates the confidence States put in the Court, as shown by the number and scope of cases entrusted to it and the Court's growing specialization in complex aspects of public international law. The Court's relevance in today's legal challenges has been shown, inter alia, in the advisory opinion rendered on the *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*.

The development of the Court's jurisprudence has proven to be most useful to States, not only for those who participate as parties to the proceedings, but for all States for which guidance is needed on the interpretation of international law. The progressive development of international law is welcomed, and the Court's contribution to the ongoing development towards an international legal order based on the rule of law is significant.

Having said that, we must ensure that the Court is not overburdened for lack of sufficient resources. In order to facilitate judicial settlement of disputes through the Court, some of the Nordic States have contributed to the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice.

The Nordic countries welcome all efforts made to rationalize the Court's working methods, for example by introducing the system of law clerks who are at the disposal of the members of the Court. We need to ensure that the Court has adequate resources for its important work.

The Nordic countries would also like to express their appreciation for the Court's informative website, which gives instant access to past and pending cases, judgments and opinions, thus contributing to the wider study, recognition and dissemination of the Court's work.

The Nordic countries reaffirm their strong support for the International Court of Justice.

**Mr. McLay** (New Zealand): First of all, New Zealand would like to associate itself with the earlier comments on the sad death of The Honourable David John Howard Thompson and extends its condolences to his family and the Government and people of Barbados.

On behalf of Canada, Australia and my own country, New Zealand, I thank the President of the International Court of Justice, Judge Owada, for his helpful report on the work of the Court over the past year. I also thank him and Vice-President Judge Tomka for their leadership of the Court over that period.

Canada, Australia and New Zealand (CANZ) congratulate Judges Xue and Donoghue on their recent election to the Court. We acknowledge the judicial service of their predecessors, Judges Shi and Buergenthal, both of whom resigned during the last year, and thank them for their valuable work during their terms of office.

CANZ takes this opportunity to reiterate its strong support for the work of the Court as the principal judicial organ of the United Nations. One of the primary goals of the United Nations, as stated in the Preamble to the United Nations Charter, is to establish conditions under which justice and respect for the obligations of international law can be maintained.

The International Court of Justice, as the only international court with general international law jurisdiction, is uniquely placed to further that goal. It plays an essential role in the peaceful resolution of disputes between States. As the Court's record reports, disputes have been submitted to it by a variety of States from many regions. This diversity, together with the wide-ranging, significant and complex subject matter under deliberation and pending before the Court over the past year, bears testament to the importance that Member States attach to the role of the Court in resolving international disputes.

The Court's second function, of providing advisory opinions on legal questions referred to it by organs of the United Nations and specialized agencies, continues to fulfil the important role of clarifying key international law issues.

CANZ encourages Member States who have not yet done so to declare their acceptance of the Court's compulsory jurisdiction. Its report records that fewer than half of the States parties to the Statute of the Court have declared their acceptance of that jurisdiction. As more States accept the Court's jurisdiction, it will have more time to consider the substance of cases, rather than objections to its jurisdiction.

CANZ recognizes that, every year, the Court handles a significant and complex range of cases and advisory opinions, and that it has successfully cleared a case backlog. We acknowledge and appreciate the Court's efforts to enhance its efficiency, which will enable it to sustain an increasing workload and to manage, simultaneously, a demanding schedule of cases. CANZ is pleased that additional staff positions have been made available to the Court and that the upgrade of technical equipment at the Peace Palace will be realized. We hope that this will improve the Court's working environment and ease the processing of its heavy caseload.

CANZ values the contribution of the International Court of Justice in promoting the rule of law and the peaceful resolution of international disputes, thus fulfilling the critical Charter objective of establishing conditions under which justice and respect for the obligations of international law can be maintained.

**Mr. Christian** (Ghana): The Ghanaian delegation feels honoured to speak under agenda item 70, in relation to the report (A/65/4) of the International Court of Justice, which the President of the Court, His Excellency Judge Hisashi Owada, presented this morning in an admirably comprehensive and lucid manner. We applaud the work done by the International Court of Justice during the reporting period under his able presidency.

Ghana welcomes the election of Judge Xue and Judge Donoghue and wish them success on the Court. We believe that these distinguished Judges will also make a significant impact on the work of the Court and build on the remarkable contribution made by Judge Shi Jiuyong, former President of the Court, and Judge Thomas Buergenthal, respectively, whom they replace.

The report of the Court before the Assembly today reminds us that the International Court of Justice is not only an organ of the United Nations — its principal judicial organ for that matter — but also the only international court of a universal character with general jurisdiction. The regional and cross-regional diversity of the great number of cases, contentious or otherwise, that the Court has dealt with in the past or which are still pending reflects the Court's universality and demonstrates that before the Court the international community speaks one language: the language of international law. The breadth and depth of the subject matter of which the Court is seized — ranging from the environment, territorial disputes, jurisdictional immunities of the State, racial discrimination and human rights to the interpretation and application of treaties — illustrate the importance of the Court in promoting the peaceful settlement of disputes and the maintenance of international peace and security and the rule of law.

As with all languages, having a thorough knowledge of the language of international law requires constant education and learning, and obviously certain disciplines of international law, such as the jurisdictional immunities of States and the immunities of high-ranking State officials from foreign criminal jurisdiction need further clarification. The

relevant jurisprudence of the Court will no doubt be invaluable in achieving this goal.

As Chair of the United Nations Advisory Committee on the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, Ghana attaches great importance to the need for a more holistic approach to the wider dissemination and progressive development of international law and its codification. We would therefore urge that greater resources be given to the Codification Division of the Office of Legal Affairs, as well as the International Law Commission (ILC), to ensure that they contribute more effectively to promoting a better understanding and appreciation of international law. This would include providing resources for ILC special rapporteurs and the Audiovisual Library of International Law, as well as increasing the funds in the Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice. The conditions for accessing the Trust Fund should be less restrictive.

We are encouraged by the initiatives taken by the Court to improve its working methods to enhance its efficiency and effectiveness in the management of its caseload and to increase its legitimacy through its real and perceived impartiality and fairness. Programmes such as the panel discussion on the topic of compulsory jurisdiction held during this week's International Law Week meeting of legal advisers of Member States are also steps in the right direction. The reports of the Court also help to demystify the procedures and rules of the Court. Enhancing access to the Court will not only depend on resources but also on building the capacity of States through training and knowledge.

In closing, I wish to observe that the debate on the report of the International Court of Justice is taking place at a time when the United Nations has given pride of place to the promotion of the rule of law at the national and international levels. The continued success of the Court will serve as an inspirational model to the regional courts that have been established, help to bridge the fragmentation of international law and serve as a bulwark for the rule of raw at the regional level.

In keeping with Ghana's motto "Freedom and Justice", the Government and people of Ghana will continue to contribute in any way, shape or form to help create conditions in which the Court will be accorded the respect and resources it deserves within the United Nations and among the international community. We shall continue to support the Court as an anchor for the peaceful settlement to disputes so that justice will surely reign to enable the peoples and States of the world to live and be at peace with each another.

**Mr. Sumi** (Japan): I would like to express my gratitude to President Hisashi Owada for his in-depth report summarizing the current situation of the International Court of Justice (A/65/4). As a State resolutely devoted to peace and firmly dedicated to the promotion of the rule of law and respect for the principle of the peaceful settlement of disputes, Japan appreciates the strenuous efforts and work of the Court presided over by Judge Owada in delivering decisions and opinions based on exhaustive deliberation.

We are especially impressed by the wide regional range of Member States seeking to resolve international legal disputes by referring cases to the Court. This fact illustrates the universality of the Court and the great importance that Member States attach to it. I am especially glad to see that the Court's docket of pending cases has grown consistently in recent years and now stands at 16 cases, involving approximately 30 different States, as Judge Owada mentioned.

The variety of the subject matter of recent cases, from the frontier dispute to the obligation to prosecute or extradite — aut dedere aut judicare — also demonstrates the significant role played by the Court in solving international disputes between States and providing its opinion on important questions of international law. In this regard, we commend the work of the Court on the advisory opinion regarding the question of the *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*.

In the international community, where we continue to witness armed conflicts and acts of terrorism, the firm establishment of law and order remains indispensable. In this regard, the role of the International Court of Justice as the principal judicial organ of the United Nations is paramount and cannot be overstated.

In concluding my remarks, I wish to reiterate the great importance the international community attaches to the lofty cause and work of the International Court of Justice and to draw the Assembly's attention to the

importance of strengthening the functioning of the Court, including the provision of additional P-2 legal officers. Japan, for its part, will continue to contribute to the invaluable work and the efficient and effective operation of the Court.

**Mr. Hernández** (Mexico) (*spoke in Spanish*): The delegation of Mexico would like to commend the International Court of Justice for the difficult work it carried out this year. Moreover, Mexico welcomes the appointment of Xue Hanqin and Joan Donoghue as the new Judges of the Court, replacing Judges Shi Jiuyong and Thomas Buergenthal, respectively, to whom we express our sincere gratitude for their important contributions to international justice and jurisprudence.

My delegation believes it appropriate to highlight the four new contentious cases and the recent request by the International Fund for Agricultural Development for an advisory opinion. Likewise, we would highlight the ruling in the *Pulp Mills on the River Uruguay* case and the advisory opinion regarding the *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, issued during the period under review. These important developments demonstrate the confidence that the international community has in the Court as the principal international judicial body.

My country also welcomes the periodic review carried out by the Court over the past few years with regard to its procedures, working methods and practice directions, aimed at enhancing the effective handling of cases. This has been crucial to this judicial body being able to sustain its level of activity.

Mexico also welcomes the General Assembly's willingness to increase the Court's number of law clerks and security personnel and to establish a new telecommunications technician post in the General Service category. In this regard, Mexico calls upon the General Assembly to continue to provide tools to the Court in order for it to achieve optimal performance as the principal judicial organ of the United Nations.

The report under review (A/65/4) today clearly and concisely lays out the disputes before the Court, showing beyond a doubt its universal nature. In this regard, my delegation wishes to stress that out of the 17 cases that the Court considered during this period, five had to do with States from Latin America and the Caribbean. Additionally, one of them was resolved this year. This demonstrates our region's commitment to international law and to the principle of the peaceful settlement of disputes.

Mexico would like to highlight the substantial legal significance that the Court's rulings have for the States parties to a dispute. It also represents the establishment of international jurisprudence that is of interest for the entire international community. The Court has an essential role in the development of international law. The ruling in the *Pulp Mills on the River Uruguay* case is a clear example of this.

In the oral and written proceedings concerning the request for an advisory opinion submitted by the Council of the International Seabed Authority to the Seabed Disputes Chamber of the International Tribunal of the Law of the Sea on the subject of responsibilities and obligations of States sponsoring persons and entities with respect to activities in the International Seabed Area, several States referred to the Court's opinion on the *Pulp Mills on the River Uruguay* case. They stated that the condition of undertaking an environmental impact assessment constitutes a requirement under general international law whenever the risk of a planned industrial activity might have significant adverse impacts in a cross-border context.

Without prejudice to the decision of the Seabed Disputes Chamber of the International Tribunal for the Law of the Sea regarding the advisory opinion, Mexico believes that this procedure will demonstrate how the Court, in developing good principles in its decisions and opinions, can enrich the work of other international legal bodies, thus furthering the development of international law as a whole.

In Mexico's view, this indicates that the existence of multiple international courts and tribunals does not necessarily lead to a fragmentation of international law. Rather, it opens doors for inter-judicial dialogue. Based on mutual respect for the competences of each judicial organ, that dialogue has enormous potential to strengthen international judiciary as a whole, in particular with a view to making it more efficient and dynamic in facing the proliferation of global challenges.

I would like to conclude by reiterating Mexico's support for the International Court of Justice as the principal judicial body for the peaceful settlement of disputes and as a principal organ of the United Nations.

**Mr. Kim Hyungjun** (Republic of Korea): At the outset, on behalf of my delegation, I would like to express our gratitude to President Hisashi Owada for his comprehensive report on the judicial developments and activities of the International Court of Justice. We also express our appreciation and support for the Court's achievements during the period under review. In addition, we would like to take this opportunity to extend our congratulations to Judge Xue Hanqin and Judge Joan Donoghue on their election as judges of the Court. We are confident that the two judges will be able to draw upon their extensive experience to make positive contributions to the Court.

Following the Cold War era, in the 1990s both public and scholarly circles naturally turned to international institutions and international law to provide solutions. Driven by rapid globalization and drastic change in the international order, debates between States on a variety of issues — ranging from territorial disputes to environmental conflicts — emerged on the international political arena, as international law appeared to be the inescapable wave of the future.

In this context, what is, or can be, the role of the International Court of Justice, the primary judicial organ of the United Nations? To prevent the occurrence of discrepancies and incongruent development of international law, we expect that the Court can act as the anchor for the harmonization of the international judiciary. Sixty-five years ago, the Court's role as the central judicial body was enshrined in the United Nations Charter. We expect to see the Court continue to seize that mandate in providing its legal wisdom and experience to the international community.

The increasing number of cases brought to the Court serve clearly to illustrate the respect and confidence that States have in the Court. Allow me to recapitulate current developments in a couple of cases that are of particular importance to our delegation.

Recently, the Court delivered its judgment concerning the *Pulp Mills on the River Uruguay* case. The case includes questions of environmental implications in the utilization of the part of the river that constitutes the countries' joint boundary, as well as the issue of whether there was a violation of obligations under the treaty signed between the States parties. The Court separated the breach in its procedural obligations from its substantive obligations under the relevant articles of the treaty in this judgment. The delivery of this decision illustrates the Court's in-depth judicial analysis in providing the most adequate decision for this case.

We also take note of the advisory opinion of the Court on the *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*. The opinion presents an important opportunity for Kosovo and Serbia to open a new phase of relations through constructive and sincere dialogue. We hope that sustainable solutions can be reached to establish peace and stability in the Balkans in the near future.

Among the various contentious cases we are interested in, the *Whaling in the Antarctic* case has attracted our attention. We expect that the Court will suggest reasonable standards, based on its judicial prudence, to interpret international conventions and obligations for the preservation of marine mammals and the marine environment.

We also note the importance of the case concerning the *Jurisdictional Immunities of the State* because of its unique historical background. The case foreshadows the possibility of the Court playing an important role in providing judicial guidance in the settlement of unfortunate historical grievances. It is essential to reconcile and settle the past in a way that individuals can also be consoled and compensated in order to rebuild amicable and friendly future-oriented relations between States.

My delegation noted and appreciated the Court's efforts to enhance its efficiency. Recently, the General Assembly contributed to sustaining those efforts by providing an appropriation for the replacement of information technology equipment. That will cover the cost of installing information technology resources, which can improve work efficiency, but additional funds are still needed. In that regard, my delegation would like to underscore the importance of the contributions of Member States, including their respect for the Court's decisions and their cooperation with the Court's efforts to promote the rule of law.

In concluding my statement, I expect that the Court will continue to extend its role and responsibilities based on its experience in creating and interpreting international law for 65 years. I reaffirm that the delegation of the Republic of Korea will be a steadfast supporter and contributor to the invaluable work of the Court.

**Ms. Gendi** (Egypt): Let me begin by expressing the deep condolences of Egypt to the people and Government of Barbados on the enormous loss of the late Prime Minister of Barbados, The Honourable David John Howard Thompson.

I would like to also take this opportunity to express the appreciation of Egypt to Mr. Hisashi Owada, President of the International Court of Justice, for his comprehensive presentation of the report of the Court (A/65/4) on its activities over the past year. I should also like to reaffirm Egypt's support for the Court's key role in ensuring the implementation of the provisions of international law, adjudicating disputes between States and providing advisory opinions to States and international organizations to guide them on how to best assume their roles and functions.

Since its establishment as the principal judicial organ of the United Nations, the Court has strengthened important legal principles and rules through its advisory opinions on the *Legality of the Threat or Use of Nuclear Weapons*, the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo* and other decisions on territorial and maritime border disputes. Those opinions have contributed to the settlement of several disputes around the world and to preventing them from escalating into armed conflicts.

The delegation of Egypt therefore emphasizes the need to encourage States and United Nations organs and specialized agencies to request advisory opinions from the Court on important legal questions arising within the scope of their activities, as these opinions encompass developments in and the codification of the rules of international law. Owing to their high moral and legal values, they contribute to consolidating the principles of justice and equality at the international level, which reflect positively on the maintenance of international peace and security. Egypt considers that it is important to provide the Court with an opportunity to consider the legality of encroachment by certain principal organs of the Organization on the competence of other principal organs that are more representative and democratic in nature.

In the same vein, it is necessary to monitor and assess the implementation of the Court's decisions and to enhance international recognition of the moral and legal values of its advisory opinions. This can be done by establishing a mechanism for that purpose within the United Nations to examine the extent of States' implementation in good faith, as required under the Charter of the United Nations, of the advisory opinions issued by the Court at the request of one of the principal organs, as well as to monitor the damage caused by failures in implementation and adopt modalities for compensating affected States. Such a mechanism would be similar to the one established to assess the damages caused by the construction of the wall and determine the required compensation, which so far still faces major obstacles.

Furthermore, the delegation of Egypt expresses its appreciation for the pioneering role played by the Court in consolidating the principle of the rule of law. We also stress the need to draw on the experience of the Court in consolidating established legal rules with respect to the responsibility of States to protect their citizens and respect international law, both with regard to diplomatic protection or consular relations and the distinction between legitimate armed struggle in the framework of the right to self-determination and terrorism.

Egypt also welcomes the steps taken by the Court to increase its effectiveness in dealing with the steady increase in cases before it. We support its request for six positions for law clerks from the regular budget. Egypt will work with other States in the Fifth Committee to respond to that request, especially as it comes at a time of increasing international efforts to utilize good governance at the international level as a means to fulfil the commitments of the Court.

In that regard, Egypt also welcomes the reference in the Court's report to the ongoing work with regard to the technological updating of the Peace Palace halls and the replacement and modernization of the audio-visual equipment in its historic courtroom and nearby rooms in order to enable the Court to perform its tasks in conformity with its international standing.

In conclusion, Egypt expresses its appreciation to all the judges of the Court and to the Registrar and staff for their efforts in the year covered by the report. We wish them success in performing the envisaged role of the Court in the future.

**Mr. Cabactulan** (Philippines): Before I proceed, I also would like to express the condolences and sympathies of my delegation to the Government and

people of Barbados on the sad demise of their Prime Minister, The Honourable David Howard Thompson.

I am pleased and honoured to address the General Assembly during its consideration of the report of the International Court of Justice (A/65/4). Likewise, I take this opportunity to commend Judge Hisashi Owada, President of the International Court of Justice, for his dedicated stewardship of the world Court and for the comprehensive and detailed report he has presented to us. On behalf of the Philippines, I also take this opportunity to welcome the election to the Court of Judge Xue Hanqin of China and Judge Joan Donoghue of the United States. They — and all the Court's judges — possess a breadth of experience and depth of expertise that is crucial in the exercise of the Court's mandate.

The Philippines reaffirms its support for the work of the Court and the invaluable role it plays in promoting an international legal order founded on the primacy of the rule of law and the peaceful settlement of disputes. As the principal judicial organ of the United Nations, the Court is the primary institution tasked with ensuring respect for the rule of law in international relations.

The Court's importance cannot be overstated. The cases referred to the Court come from diverse regions, deal with extremely varied subject matter and are growing in legal and factual complexity. Yet, the Court has remained steadfast in its efforts to further increase its efficiency.

In that regard, the Philippines commends the Court for taking steps that have allowed it to sustain its level of activity. The continuous re-examination of its procedures and working methods, the regular updating of its practices adopted in 2001 for use by States appearing before it, and the setting of an exacting schedule have all enabled the Court to clear its backlog of cases, and thus increase the confidence placed in it by States submitting a dispute for fair and timely resolution.

My delegation has taken due note of the General Assembly's contributions to sustaining the Court's efforts at streamlining and making its working methods more efficient by approving the establishment of much-needed additional posts in the Court's Registry in 2009. The Philippines reiterates its call for Member States to continue to provide the Court with the necessary means to ensure its proper and efficient functioning.

My delegation again reiterates its approval of the work done by the world Court aimed at making the Court and its decisions more widely accessible to the public through traditional media and information and communications technology. The Court's website continues to undergo dynamic changes in both its content and its user interface. The Philippines welcomes the inclusion on the Court's website of its entire jurisprudence and that of its predecessor, the Permanent Court of International Justice.

In order to strengthen the foundations for global respect for the rule of law and its effective implementation, transparency and accessibility must, along with integrity and independence, be the Court's cornerstones. Yet, transparency and accessibility must never compromise the Court's security. It is on that point that the Philippines notes the request to strengthen the Court's security team to enable it to confront new technological threats in respect of information systems security.

Our increasingly interdependent world underscores the need for the rule of law. The cases brought before the International Court of Justice illustrate the variety and complexity of the issues we face. New and emerging subjects of specialization in international law demand thorough consideration in order to ensure that rights are not encumbered and obligations are carried out.

In recent years, we have witnessed a steady rise in the resorting by States, entities and even individuals to specialized tribunals and forums, in attempts to address the increasing demands of interdependence. My delegation views this development as a reflection of increased confidence in, and recourse to, the rule of law, which the International Court of Justice has helped to propagate. In that regard, we count on the Court's function of elucidating norms to provide a basic framework of case law and norms, as well as to harmonize jurisprudence in general international law, in order to provide guidance for specialized tribunals.

In conclusion, the Philippines views the increased workload of the International Court of Justice as a positive sign of the trust and confidence placed in the Court's legal supremacy. Therefore, in the exercise of its mandate as the only international court of universal character with general jurisdiction, we must continue to provide the support crucial for maintaining and

strengthening the rule of law, which underpins peaceful relations between States.

**Mr. Gutiérrez** (Peru) (*spoke in Spanish*): I would like to thank the President of the International Court of Justice, Judge Hisashi Owada, for being here with us this morning and for his interesting briefing on the hard work carried out by the Court over the past year.

States should resolve their disputes by peaceful means and in accordance with the principles of justice and international law. To achieve that goal, the Charter of the United Nations itself recognizes the peaceful settlement of disputes as a general principle of international law whereby States must refrain from the use or the threat of the use of force. To emphasize the supreme importance that the Charter of the United Nations ascribes to maintaining international peace and security and to the development of friendly relations and cooperation, States declared as a principle, in resolution 2625 (XXV), that in international relations they would refrain from resorting to the threat or use of force against the territorial integrity or political independence of any State — or in any other manner inconsistent with the purposes of the United Nations. Likewise, they deemed it imperative for all States to settle their international disputes by peaceful means in accordance with the Charter.

The very establishment of the International Court of Justice was intended to contribute to the creation of a universal system at the service of States for the peaceful settlement of their disputes, in accordance with international law. To that end, the Court's decisions resolve the legal disputes brought to it by States and contribute to international peacebuilding. Similarly, by means of its advisory opinions, the Court contributes to the development of international law and the primacy of the rule of law.

Despite the sensitivity of the issues that are the subject of disputes among States — including, among others, questions of territorial and maritime demarcation, diplomatic protection, environmental issues, the exercise of jurisdiction and the system of immunities — States have consistently chosen to come before the Court to resolve such disputes definitively. That shows that, thanks to the judicial quality of its decisions and its independence and impartiality, the Court enjoys a great degree of legitimacy.

Peru's commitment to the work of the International Court of Justice is expressed in the American Treaty on Pacific Settlement of 1948, otherwise known as the Pact of Bogota, whereby States parties agreed always to avail themselves of peaceful proceedings to resolve disputes, including turning to the Court. Peru has also recognized the Court's unconditional competence in disputes, in accordance with Article 36, paragraph 2, of the Statute of the Court.

Similarly, the Manila Declaration on the Peaceful Settlement of International Disputes, adopted by consensus in resolution 37/10, established that, as a general rule, disputes of a legal order should be brought before the International Court of Justice by the parties, and that such submissions should not be considered as unfriendly acts among States. In accordance with this acknowledgement, Peru deems it of the highest importance that the Court's jurisdiction be universally accepted. As the report contained in document A/65/4 indicates, currently 66 States have issued statements acknowledging the compulsory jurisdiction of the Court, although in many cases such statements have been made with reservations. In that connection, Peru appeals to States that have not yet done so to accept the Court's compulsory jurisdiction on disputes.

As States, we are obliged to respect the decisions of the Court. As a State respectful of international law, Peru therefore reiterates its commitment to comply with the obligations stemming from the Statute of the Court and urges other States to comply with its decisions.

As we reaffirm our full support for the work of the Court, we must also acknowledge the outstanding work of its judges. Both their superior legal skills and efficient management have made it possible for the Court to adopt measures aimed at allowing it to carry out its tasks more easily, despite the greater number of cases before it.

In terms of disputes, the Court has had a heavy docket over the course of the past year with the submission of four new cases and one request for an advisory opinion. Those new cases must be added to the pending cases, which bring the number of proceedings to 17 and two advisory procedures during the current period.

We must also emphasize the important outreach work done by the Court, especially by means of its official publications and its Internet portal, which is an

invaluable tool. Similarly, the dialogue between the Court and various institutions such as the International Law Commission, various national and regional tribunals and academic bodies enables an exchange of opinions that benefits and enriches the legal community and the promotion of the rule of law at both the international and national levels.

States must ensure that the Court enjoys sufficient resources to carry out the tasks entrusted to it. Thus we welcome the fact that in 2009, additional posts requested for legal and technical assistants were approved, as was the replacement and modernization of the equipment. However, a request remains pending for the creation of additional security posts, which will make it possible to reinforce the performance of tasks and confront new technological threats to the security of the Court's information systems. In that context, we believe the request referred to in the Court's report is completely reasonable and should be heeded as swiftly as possible.

Peru expresses its gratitude to those countries that have contributed to the Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice and joins in the appeal of the Secretary-General to all States and relevant bodies to cooperate with the Fund.

Lastly, I would not like to conclude without putting on record my country's congratulations to the Court's two new Judges, Xue Hanqin and Joan E. Donoghue. We also wish to express our warmest gratitude to retiring Judges Shi Jiuyong and Thomas Buergenthal and to thank them for their valuable contribution.

**Mr. Sene** (Senegal) (*spoke in French*): Allow me at the outset to thank the President of the International Court of Justice, Mr. Hisashi Owada, for his rich and detailed presentation of the activities of that body for the period from 1 August 2009 to 31 July 2010. I would also like to extend my thanks to all the staff of the Court.

I wish to say how pleased my delegation is to take part, once again this year, in the annual meeting that gives us an opportunity to review the report of the International Court of Justice (A/65/4). For Senegal, this gathering is a timely opportunity to focus on the constructive action of the Court in promoting the ideals of peace and justice, which are at the base of the creation of the United Nations. The emergence of a fairer and more peaceful world requires in particular promoting respect for the rule of law and the peaceful settlement of disputes.

It goes without saying that the International Court of Justice, which is the only international body of a universal character with general jurisdiction, undoubtedly constitutes the main link in the international legal order. Its everyday activities help in the promotion of international justice, the development of international law and the maintenance of international peace and security.

Senegal, firmly committed to promoting justice and the rule of law, reiterates its confidence in the International Court of Justice. And that confidence is undoubtedly best reflected by its recognition of the compulsory jurisdiction of the Court, pursuant to Article 36 of its Statute.

My delegation welcomes the high number of applications submitted to the Court, which reflects, moreover, the growing acceptance of the primacy of law throughout the world and of the interest that States accord to the peaceful settlements of disputes.

The importance of the role of the International Court of Justice as the principal legal organ of the United Nations in dispute settlement can be gauged by the increasing confidence placed in it today by States turning increasingly to the wisdom of its judges. In promoting the legal settlement of disputes, the Court helps to mend relations between States and contributes considerably to maintaining international peace and security.

Along the same lines, basing its work on the promotion of the rule of law, the International Court of Justice also contributes to respect for the rule of law at the international level. Moreover, the orders and decisions handed down by the Court in serving jurisprudence and legal rationale in several situations helps to enhance, codify and unify international law.

For all of those reasons, my delegation reiterates its full support for the International Court of Justice. It commends its praiseworthy efforts to enhance its efficacy and calls for it to be given the necessary resources to duly carry out its noble missions.

The review of the report of the International Court of Justice seems also to be a timely moment to recall — if that were still necessary — that the beneficial effects of the peaceful settlement of disputes

no longer need to be proven. The reference in the United Nations Charter to the settlement of disputes by peaceful means in conformity with the principles of justice and international law as one of the essential goals of the United Nations and the principal instrument for maintaining international peace and security sums up in itself all its importance.

Our Organization, which has a special responsibility in the sphere of promoting dispute settlement, should continue its efforts to help Member States submit their disputes before the International Court of Justice.

**Mr. Ali** (Sudan) (*spoke in Arabic*): Our delegation welcomes the report of the Secretary-General in document A/65/309, and the report on the work of the International Court of Justice in document A/65/4, which covers the period from 1 August 2009 to 31 July 2010. We also welcome the presence of Mr. Hisashi Owada, President of the International Court of Justice, and his presentation on the work of the Court.

The report of the International Court of Justice reaffirms the positive developments in the work of the Court and the fact that it is considering a growing number of cases submitted to it. That is proof of the Court's increasing importance to this Organization and to Member States.

Our delegation commends the high professionalism of the judges of the Court and its rulings and advisory opinions and the high quality of the Court's work, which qualifies it to continue its function in support of international peace.

While we reiterate the important role of the International Court of Justice, its continued impartiality — in which we are confident — has continued to gain the trust of the international community, as indicated by the growing number of cases on its docket. We also commend the active role played by the Court and its advisory opinions in support of the principles of State sovereignty and non-interference in the affairs of other States, in line with the principles of the United Nations Charter and established norms of international law.

Our delegation also welcomes the report of the Secretary-General on the Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice (A/65/309). We welcome the information it contains and call for providing more support to the Court so that it may maintain its judicial role.

In conclusion, we also want to express our confidence that the Court will continue its judicial process, which has been distinguished by objectivity, professionalism and impartiality, in the service of protecting international law from politicization.

**Mr. Errázuriz** (Chile) (*spoke in Spanish*): First, I wish to join in the expressions of condolence offered by the Ambassador of Trinidad and Tobago, speaking for the Group of Latin American and Caribbean States, on the unfortunate death of the Prime Minister of Barbados, David John Howard Thompson. Our entire region is in mourning. On behalf of my Government and on my own behalf, I wish to extend our most sincere condolences to the Government and people of Barbados and to the family of the late Prime Minister.

Chile takes this opportunity to express our appreciation to the President of the International Court of Justice for presenting the comprehensive report covering the period from 1 August 2009 to 31 July 2010 (A/65/4).

The significant work done by the International Court of Justice as the highest judicial organ of the United Nations and the mission entrusted to it by the Charter for the peaceful settlement of disputes and for advisory functions have been highlighted in the report introduced by its President this morning. The Court makes an outstanding contribution, in the framework of the multilateral system of peace and security, to consolidating relations of peace and friendship among countries and to strengthening the international legal order based on respect for the law, which the United Nations has, in the Charter, as its fundamental pillar.

The Court has a huge task to perform in the current international context, because of the existence of numerous multilateral treaties requiring judicial settlement of disputes as well as of the application of mechanisms accepted by countries in their unilateral declarations or in bilateral treaties.

As in previous years, we reiterate that the advisory function of the Court is particularly important, as demonstrated by its opinions based on international law, which provide substantive support to the work of the United Nations.

Our country continues to believe that the Court should be given the necessary material and human means and resources to deal correctly with the increase in its caseload and with the responsibilities which it must assume in the context of international law.

We also express our appreciation for the Court's efforts to widely publicize its work and make it broadly accessible to international public opinion, using modern methods and technologies. Thanks to those efforts, international law itself is strengthened, and we must give ongoing and broad support to the activities of the Court. We emphasize our interest, shared with the Ibero-American community, in making available a Spanish-language version of the judgments of the International Court of Justice.

As regards the case brought against Chile before the International Court of Justice, my Government once again expresses its confidence in the efficacy of international law and in respect for treaties.

I shall conclude by reiterating our recognition of the commendable work of the Court and its invaluable contribution to the observance of international law.

**Mr. Gevorgian** (Russian Federation) (*spoke in Russian*): Allow me to express our gratitude to the President of the International Court of Justice, Mr. Hisashi Owada, for his introduction of the Court's report (A/65/4).

The past year, like previous years, was very productive for the International Court of Justice. The caseload considered by the Court was unprecedented, which reflects the increasing level of confidence of States in the principal legal organ of the United Nations.

Yesterday we had an opportunity to speak regarding the Court's activities at a closed meeting of the Security Council. We spoke, inter alia, of our position regarding the advisory opinion of the Court on the question of the legality of the unilateral declaration of independence by Kosovo. An important part of the advisory opinion is the confirmation of the fact that Security Council resolution 1244 (1999) continues to be in force and continues to apply to the situation in Kosovo. In effect, the opinion confirms that the process for defining the final status of Kosovo is not over and that talks on the issue must continue.

Currently the Russian Federation is a party to a case entitled *Application of the International Convention on All Forms of Racial Discrimination (Georgia v. Russian Federation)*, instituted by Georgia against Russia. The Russian Federation has submitted its preliminary objections regarding the Court's jurisdiction over this case. A month ago the oral hearings on the case were completed. Now we are awaiting the Court's decision.

I would like to briefly outline our grounds for arguing that the Court does not have jurisdiction over this case.

In order to recognize the jurisdiction of the Court on the Convention on Racial Discrimination, two conditions need to be met: first, the presence of a dispute pertaining to the Convention, and secondly, the applicant State must institute proceedings as envisaged under Article 22 of the Convention, which states that prior to filing an application with the International Court of Justice, talks must be held and the Committee on the Elimination of Racial Discrimination must be addressed. Neither circumstance is present in this case. Prior to Georgia's filing the application with the Court, no dispute existed between Russia and Georgia over racial discrimination in Abkhazia and South Ossetia. Nor has Georgia ever brought that matter up with the Committee on the Elimination of Racial Discrimination.

On those grounds we have every reason to believe that this case has been artificially tied to the Convention and brought before the Court with exclusively spurious political motives.

In addition, the case in question has unique features that the Court has never previously encountered in its practice. For the first time in the history of international jurisprudence, a suit has been brought against a State that is not a party to the dispute but a formerly internationally recognized peacemaker and mediator in negotiations. Moreover, Georgia itself recognized Russia's peacekeeping mission, requested such help through official channels and has never attempted to terminate the Russian peacekeeping forces' mandate. And there is another unique feature here. The suit was cynically brought by a State that attempted to settle an inter-ethnic conflict by using armed brute force, both against civilians and against peacekeepers who were acting with its consent and under an international mandate.

We sincerely hope that these factors will be duly taken into consideration in the decision on the question

of jurisdiction in the case of *Georgia v. Russia*. Otherwise, this would send an incorrect signal to States that might wish to resolve their disputes by peaceful means, as envisaged by the United Nations Charter. Besides that, it would undermine the standing of the Committee on the Elimination of Racial Discrimination and other bodies working in the area of human rights that were specifically created to settle contentious issues. The result would be that the carefully honed methods of settling international disputes, which have been developed over many years, could simply be ignored, and people would resort to the Court immediately.

Furthermore, this could send a negative signal to peacekeeping States, whose peacekeeping contingents could almost always be accused of violating the provisions of the International Convention on the Elimination of All Forms of Racial Discrimination. There is also the risk that States would be much more cautious in recognizing the jurisdiction of the International Court of Justice regarding international agreements. We hope that the Court will take into account all of these points when formulating its decision on its jurisdiction in the case under discussion.

We should note that the Russian Federation is firmly committed to the principle of the peaceful settlement of international disputes. We are confident that the International Court of Justice, as the main body of international justice, will continue to demonstrate the highest standards of jurisprudential practice and will remain a paragon of objective and independent international justice, whose authoritative opinion on the most complex issues will continue to contribute to strengthening international order.

**Mr. Riyan** (India): Before I start, I would like to express my sincere condolences to the Government and people of Barbados on the sad demise of their beloved Prime Minister, The Honourable David Thompson.

It gives me great pleasure to address this plenary meeting of the General Assembly on the report (A/65/4) of the International Court of Justice, the principal judicial organ of the United Nations. I would like to thank the President of the Court for his comprehensive and lucid presentation of the report.

The International Court of Justice was established, along with other organs of the United Nations, to save future generations from the scourge of war and to find a way to settle inter-State disputes through peaceful means by the application of international law. The Court still remains the only judicial body whose legitimacy is derived from the Charter and enjoys general jurisdiction, while all other international judicial institutions have specific competences and lack jurisdiction of a universal nature. The Statute of the Court has been made an integral part of the Charter, a status that is unique to the Court and not held by any other international court or tribunal to date.

All States are free to approach the Court for resolution of their disputes with other States. Under Article 36 of the Charter, the Security Council may also recommend that the parties refer their legal disputes to the Court, while the General Assembly and the Security Council may seek its advisory opinions. Those provisions clearly indicate the central role given to the Court within the United Nations system.

The Court's judgements have played an important role in the interpretation and clarification of the rules of international law, as well as in its progressive development and codification. The Court has performed its judicial functions while remaining careful to respect political realities, the sentiments of States and its own Statute. It has emphasized the rule of law and the role of international law in regulating inter-State relations, despite the fact that inter-State relations are necessarily political in nature. It has also contributed significantly to settling legal disputes between sovereign States, thus promoting the rule of law in international relations.

India firmly believes that, owing to the Court's unique position in the United Nations, no other judicial organ in the world possesses its capacity to deal with international problems. Since its inception, the Court has dealt with a wide variety of complex legal issues. It has pronounced judgment in areas covering territorial and maritime delimitation, diplomatic protection, environmental concerns, racial discrimination, the violation of human rights and the application of international treaties and conventions. Such judgments have played an important role in the progressive development and codification of international law.

At present, there are four new contentious cases and one new advisory proceeding before the Court. Those cases deal with a diversity of subjects, ranging from diplomatic relations to jurisdiction and

enforcement of judgments in civil and commercial matters and to an administrative matter related to the International Labour Organization. The Court is also dealing with geographic issues, as in the case of whaling in Antarctica. The cases before it involve countries from all over the world, including States in Europe, Latin America, Africa and Asia, and thus reflect its universality.

The growing acceptance of the Court's jurisdiction by States further highlights the importance of the Court and the confidence of the States in the Court's ability to resolve their legal disputes. This has greatly increased the workload of the Court. As of 31 July 2010, the number of contentious cases on the docket of the Court stood at 15, as compared to 13 one year earlier.

To enable the Court to fulfil its task, it is necessary that the Court be provided with adequate resources, so that it can respond efficiently and in a timely manner to the expectations of States that submit their disputes to it for settlement.

**Mr. Tang** (Singapore): My delegation would like to express its thanks to the International Court of Justice for the comprehensive and informative report on its work from 1 August 2009 to 31 July 2010 (A/65/4). It is evident that the Court has had an extremely busy year dealing with a myriad of legal issues. It is therefore a testament to the leadership of President Hisashi Owada, whom my country had the honour to receive as a guest speaker earlier this year at the Singapore Academy of Law, that the Court has been able to discharge its duties with the highest levels of competence and professionalism.

It is Singapore's firmly held view that international relations must be governed by the rule of law in order to preserve international peace and stability. Fundamental to the rule of law is the notion that disputes must be resolved through peaceful means. Where disputes — in particular those that have become intractable over time — cannot be resolved through informal processes such as negotiations or mediation, serious consideration should be given to the adjudication of the dispute by a neutral third party.

Needless to say, the Court plays a vital role in that regard. Under international law, there is no formal hierarchy among the various judicial mechanisms and international tribunals, but it is incontrovertible that the Court commands immense prestige and authority. First, it is the only international court of a universal character with general jurisdiction. Secondly, it is the principal judicial organ of the United Nations and draws on a heritage dating back to the Permanent Court of International Justice. Its judgments have been, and continue to be, extremely influential and have a deep impact on the development of international law. The Court therefore plays a fundamental role in ensuring that the rule of law in international relations is maintained and strengthened.

During the period covered in the report under consideration, there have been a number of jurisprudential developments of particular interest to my delegation. We note that the Court has taken the opportunity to clarify the jurisprudence relating to the seeking of provisional measures and other jurisdictional issues, given the number of cases in which such issues have been raised. These clarifications are useful in this developing area of international law and, given the increase in the number of cases where such arguments are being made, we anticipate that there will be other occasions in the future for further elaboration and development. We also note the increasing number of disputes involving issues of environmental law that are being brought before the Court. We look forward to receiving the views of the Court on those issues, given the dynamic growth of that area of law and their pertinence to the global community.

We have also keenly followed the deliberations of the Court in the case concerning the unilateral declaration of independence in respect of Kosovo, since this is an area of law which is of importance to all countries. As we have observed on previous occasions, this issue involves a complex factual matrix, and in that regard, we were gratified that the Court took great care to seek the views of the actors involved in that declaration in order to ascertain the complex set of events that led to it. We likewise welcomed the fact that numerous countries took an active role in the deliberations and provided their views on the issues at hand. That inclusive process displayed the seriousness with which the Court undertook its duties in the case and also demonstrated the high level of engagement of the international community in an issue of deep legal importance and augurs well for the continued strength of the rule of law at the international level.

With regard to the administration of the Court, my delegation applauds the continuing steps taken by it

to streamline its procedures and to clear its backlog. That will further assist in assuaging the concerns expressed in certain quarters in relation to the pace of proceedings before the Court. My delegation urges the Court not to let up in that regard, and in particular, to arrange for the commencement of oral proceedings as soon as possible after the conclusion of the written phase of the proceedings. We are also encouraged to read that work is proceeding on the modernization of the Great Hall of Justice, including the introduction of information technology resources on the judges' bench and we look forward to the speedy completion of that work.

Singapore notes the request made by the Court for additional security posts in paragraph 26 of its report. It is the view of my delegation that that request was not made lightly, given that it was pursuant to a security audit triggered by the heightened risk of terrorist attacks. Unfortunately, those risks have not lessened with time. Given the central role that the Court plays and the range of issues that it must deal with, including some of a highly controversial nature, it is only right and prudent that we support that request.

In conclusion, Singapore reiterates its belief that the Court plays a vital role in ensuring the existence and maintenance of the rule of law in international relations. We continue to hold the Court in our deepest regard and pledge our continued support for its work. We wish the Court every measure of success in meeting its future challenges and in the discharge of its duties for the year ahead.

*The meeting rose at 1 p.m.*

United Nations A/65/PV.39

# General Assembly

Sixty-fifth session

*Official Records*

**39**th plenary meeting
Thursday, 28 October 2010, 3 p.m.
New York

*President:* Mr. Deiss ..... (Switzerland)

*In the absence of the President, Mrs. Rubiales de Chamorro (Nicaragua), Vice-President, took the Chair.*

*The meeting was called to order at 3 p.m.*

**Agenda item 70** (*continued*)

**Report of the International Court of Justice**

**Report of the International Court of Justice (A/65/4)**

**Report of the Secretary-General (A/65/309)**

**Mr. Böhlke** (Brazil): Let me start by thanking the President of the International Court of Justice, Judge Hisashi Owada, for his comprehensive briefing on the work of the Court. I commend the judges of the Court for their significant contribution to the effective application of international law. I also wish every success to the recently elected members of the Court, Judges Xue Hanqin of China and Joan E. Donoghue of the United States of America.

I would also like to thank the Registrar of the Court for his important work. As we know, the Registrar performs a central function in providing administrative services to the International Court of Justice and in acting as an officer in the daily legal activities of the Court.

In the Preamble of the Charter of the United Nations, all Member States made a clear commitment

> "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained",

Furthermore, numerous other provisions of the Charter make specific reference to the importance of upholding the principles and norms of international law and ensuring the peaceful settlement of disputes.

The International Court of Justice is a key element in the efforts to achieve those goals. By resolving international disputes and issuing advisory opinions, the Court not only strengthens the rule of law on a global scale, thus enhancing predictability and stability in international relations, but also contributes to the maintenance of international peace and security.

The International Court of Justice has been addressing cases whose subject matter touches a wide range of sensitive issues, such as territorial and maritime delimitation, environmental concerns, jurisdictional immunities of the State, violation of territorial integrity, racial discrimination and human rights violations. Over the past year, the Court has taken up four new cases and received one request for an advisory opinion. The number of contentious cases on the docket remains high, standing at 15 at the moment, compared to 13 in the previous year. Also noteworthy is that the contentious cases come from various parts of the world.

Those remarkable aspects of the recent work of the Court testify to its true universal character, its wide acceptance and the trust placed by the international

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community upon the principal judicial organ of the United Nations. In order to maintain confidence in the Court, States that are parties to a case need to comply with the relevant decision made by that organ, in accordance with the Charter.

My delegation welcomes the continued efforts made by the Court to increase its efficiency and thereby enable it to cope with the steady increase in its workload. We note that the cases referred to the Court are growing in factual and legal complexity, as have the several phases of the process, which may include preliminary objections or requests for the indication of provisional measures. However, justice needs to be served speedily in order to strengthen the rule of law at the international level.

Brazil notes with satisfaction that the General Assembly responded positively to the request made by the International Court of Justice to establish new law clerk posts with a view to enabling each member of the Court to benefit from personalized legal support and thus to devote more time to reflection and deliberation. We also welcome the creation of posts to manage the new telecommunications infrastructure of the Court and better assist the Registrar. The Court should be granted all the assistance it needs to discharge its functions in an expeditious, effective and impartial manner.

In conclusion, I wish to reiterate the unwavering support of my delegation for the work undertaken by the Court and its significant contribution to the continued strengthening of a rules-based international system. The Court has played a key role in the fulfilment of the purposes enshrined in the Charter of the United Nations and will continue to do so in the future as the world becomes more integrated and interconnected.

**Mr. Ojo** (Nigeria): The delegation of Nigeria wishes to join all other delegations in expressing its condolences to the family of the late Prime Minister, Mr. David Thompson, as well as to the Government and the good people of Barbados, on the untimely death of Mr. Thompson.

The Nigerian delegation welcomes and expresses its appreciation to the President of the International Court of Justice, His Excellency Judge Hisashi Owada, for the leadership he has provided, and we congratulate the new Judges that were elected earlier this year.

We commend the report contained in document A/65/4, which has comprehensively summed up the activities of the Court for the period under review. My delegation also notes that the Court, which is not only a principal organ of the United Nations but also an international court of universal character with general jurisdiction, has over time successfully mainstreamed the peaceful settlement of disputes on a growing number of diverse issues, while excluding all political considerations. The scope of cases handled by the Court encompasses a wide variety of subjects ranging from territorial and maritime delimitation, diplomatic protection, environmental concerns, jurisdictional immunities of States, violation of territorial integrity, racial discrimination, violation of human rights, and interpretation and application of international conventions and treaties.

The increased recourse to the Court by States for judicial settlement of disputes on diverse issues is a clear demonstration of the confidence they have in the Court and the acceptability of this judicial institution. We are pleased with the commitment of the Court to improve its efficiency in order to cope with its increasing workload. We note with satisfaction that the Court has continued to re examine its procedures and working methods. It is heartening to note that efforts are being made to strengthen the staff of the Court's Registry, to improve on skills and efficiency of delivery, and to provide incentives to Judges.

On the issue of recognition of the Court's compulsory jurisdiction, my delegation wishes to note that States parties cannot, on one hand, establish the Court as the judicial organ of the United Nations in a mandatory manner, while at the same time viewing the issue of recognition as a matter of voluntary acceptance by individual nations. It is therefore saddening that many decades after the establishment of the Court, only 66 declarations of recognition have been received.

We therefore appeal to all the countries that have yet to do so to accede to the declaration of recognition of the International Court of Justice in view of the Court's central role in the consolidation of the rule of law at the international level. The referral of cases to the Court offers more peaceful options in the settlement of disputes between States than do the costly exchange of hostilities. Nigeria's acceptance of the Court's judgment in the celebrated *Bakassi* case with the Republic of Cameroon is worthy of emulation.

However, we also wish to use this opportunity to emphasize that the Court should endeavour to develop more effective mechanisms for monitoring implementation of the Court's decisions as well as for evaluating the moral and legal outcomes of its advisory opinions.

**Mr. Zaimov** (Bulgaria): Let me first thank President Owada for his presentation of the report of the International Court of Justice covering the period from 1 August 2009 to 31 July 2010 (A/65/4).

Bulgaria attaches great importance to the Court as the principal judicial organ of the United Nations and the only international court of a universal character with general jurisdiction. Since its establishment, the International Court of Justice has played an important role in addressing disputes between States, thus contributing to the development of international law and the promotion and strengthening of the rule of law. By being a cornerstone for the peaceful resolution of disputes, which is fundamental for the maintenance of international peace and security, the Court has acquired a solid reputation as an impartial institution with the highest legal standards, in accordance with its mandate under the Charter of the United Nations.

Over the past few years, the number of cases pending before the Court has increased, standing at the present moment at 15. Contentious cases have grown in factual and legal complexity and come from all over the world, which is an illustration of the regional diversity of the Court's cases and its universality. Member States continue to reaffirm their confidence in the Court's ability to resolve their disputes. The Court's advisory opinions carry great weight and moral authority, often serving as an instrument of preventive diplomacy, and have an ever-increasing value for the clarification of the status of international law on different issues.

The increasing caseload before the Court, coming from so many different geographical regions is not only a testament to the growing recognition of the Court's vital role in the settlement of disputes, but also proof of the confidence that States have in the Court.

A case in point in that regard is the changing docket of cases entrusted to the Court, the scope of cases and the Court's growing specialization in complex aspects of public international law. While in the past most of the cases brought before the Court related to territorial and maritime delimitation disputes, a growing number of new types of cases have been referred to it recently, such as jurisdictional immunities of the State, jurisdiction and enforcement of judgments in civil and commercial matters, whaling in the Antarctic, aerial herbicide spraying, and so on.

It is worth noting that regard that the time needed for rendering decisions and advisory opinions has been decreasing.

On behalf of my Government, I would like to take this opportunity to encourage all States that have not done so to accept the Court's compulsory jurisdiction under Article 36 of the Statute of the Court in order to further enhance its role in contributing to the maintenance of international peace and security and the rule of law.

Last but not least, let me also note with satisfaction the recent election of two judges, whom we congratulate. They are the first female judges to sit concurrently on the Court, which we consider to be a positive step in addressing the gender balance of the Court.

In conclusion, Bulgaria reaffirms its strong support for the International Court of Justice.

**Mr. Tladi** (South Africa): I thank you, Madame, for affording us the opportunity to deliver a statement on the report of the International Court of Justice (A/65/4). I also wish to thank the President of the Court, Judge Owada, for his presentation of the Court's report.

Allow me also to extend our warm congratulations and welcome to Judge Xue Hangin and Judge Joan Donoghue upon their election to the Court. At the same time, we thank Judges Shi and Buergenthal for the contribution that they have made over the years to the Court.

This delegation has, on a number of occasions, stressed the importance of judicial settlement for the promotion of the rule of law and the pursuit of the purposes and principles of the Charter of the United Nations. The willingness of States to refer matters to the International Court of Justice facilitates the development of international law as an instrument for creating a better world for everyone. This, after all, is the very reason for the existence of modern international law beyond the State-centred pre-Second World War international law. It is for that reason that we note with pleasure that the number of cases on the

Court's docket continues to grow. We welcome the four new submissions made to the Court in the period under review, while noting that a fifth has been withdrawn.

In our previous statement on the report of the Court, we made specific reference to cases involving environmental protection on the Court's docket, namely the cases entitled *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* and *Aerial Herbicide Spraying (Ecuador v. Colombia)*. We stated our eagerness for the judgments to be handed down in the hope that they will build on the already rich wealth of jurisprudence on the environment in international law. Indeed, the Court's decision on the *Pulp Mills* case further develops principles of international environmental law. While the Court's determination that there was an obligation to cooperate is based principally on treaty obligations under the Statute of the River Uruguay, the Court clearly draws upon general principles, in particular in making the link between obligations that are both procedural and substantive.

The principle of prevention, enunciated in earlier Court decisions, notably in the *Corfu Channel (United Kingdom v. Albania)* case and in the Advisory Opinion on the Legality of the Use or Threat of Use of Nuclear Weapons, was drawn upon significantly by the Court in reaching this decision. This principle, which was first enunciated in that famous arbitral decision in the *Trail Smelter* case, is also contained in both the Stockholm Declaration on the Human Environment and the Rio Declaration on Environment and Development. The *Pulp Mills on the River Uruguay* case illustrates, therefore, the Court's continuing contribution to this constantly developing area of international law.

Allow me to digress momentarily. The *Pulp Mills* case is important not only for the environmental principles it enunciates, but also with respect to the question of the Court's assessment of evidence. In that respect, we have taken note of the joint dissenting opinion of Judges Al-Khasawneh and Simma, which suggests that in such cases there is a need for the Court to appoint its own experts to assess the evidence. We recall that in 2006, then-President of the Court Higgins noted the particular difficulties that the Court, which was not designed to evaluate evidence, faced when parties to a dispute presented conflicting and often complex evidence. This is an issue that will need to be addressed one or way or another. Nonetheless, we keenly await the Court's judgment in the *Aerial Herbicide Spraying* case and hope that it will also make a contribution to the relevant principles.

We have also noted that another environmental case has been added to the Court's docket, namely, the *Whaling in the Antarctic (Australia v. Japan)* case, and are looking forward to the Court's decision in that case, which, we hope, will similarly contribute to the body of law governing the environment, in particular in respect of the law of the sea.

South Africa has, on a number of occasions and in various forums, spoken of the importance of advisory opinions as a tool for the peaceful settlement of disputes. An advisory opinion that was eagerly anticipated in many quarters is the Advisory Opinion on the *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*. My delegation had already expressed its eagerness for the release of that Advisory Opinion in our statement at the sixty-fourth session. Many international law experts, including those supporting the unilateral declaration of independence and those opposed to it, felt somewhat disappointed or, to put it mildly, somewhat underwhelmed by the Opinion. Many of us had expected the Court to make a significant contribution to international law, in particular by exploring the intersection of various, sometimes conflicting, principles of law. We had anticipated, for example, the exploration of the relationship between territorial integrity, the right to self-determination and sovereignty, among other things. While the Court, of course, declared the principle of territorial integrity to be limited only to inter-State relations, we can find no a priori reason for that conclusion. We had anticipated, also, that the Court would shed some light on the applicability of the right to self-determination and its confines beyond the context of colonialism.

Instead, the Court, as we heard this morning, decided to interpret narrowly — and remarkably literally — the question put to it, in such a manner that the Opinion, in the final analysis, does little to assist either the General Assembly or the international community of States in grappling with the real question that the drafters of the question had intended to seek an opinion on. We must recall that the purpose of an advisory opinion is to assist the author of the request. While a purely literal interpretation might justify the narrow approach adopted by the Court, the Court has itself noted in this and other advisory opinions — for

instance in the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory question — that it may "broaden, interpret and even reformulate the question".

If the Court felt it inappropriate for other reasons to deliver an opinion on the real question, then, as the dissenting opinion of Judge Bennouna mentions, the Court could, as its jurisprudence allows, have decided not to exercise its jurisdiction, even though legally it had such jurisdiction. However, my delegation stresses that this discretion should be exercised sparingly.

Nonetheless, we are pleased that the various dissenting and separate opinions of the Court, most notably the dissenting opinion of Judge Koroma, the separate opinions of Judges Yusuf and Trindade, and the declaration of Judge Simma, provide a rich source of analysis of the legal issues in question, and we hope that delegations will consult them, as they continue to discuss and consider the question of a unilateral declaration of independence.

Finally, we are pleased to note the various other non-judicial activities of the Court, including the hosting of a number of visits and the publications of the Court.

**Mr. Tsiskarashvili** (Georgia): My delegation would like to join previous speakers in welcoming the President of the International Court of Justice, His Excellency Hisashi Owada, and to commend him for the informative presentation he made earlier today (see A/65/PV.38). Georgia takes note of the report of the International Court of Justice (A/65/4) presented to the General Assembly today for its consideration. The report briefly outlines developments concerning the case instituted by Georgia against the Russian Federation in 2008 with regard to the latest violation of its obligations under the Convention on the Elimination of All Forms of Racial Discrimination by orchestrating ethnic cleansing and discrimination involving violence and the subjection of numerous Georgians to deprivation of their fundamental rights, including safe and dignified return to their homes in two provinces of their country, namely, the Tskhinvali region and Abkhazia.

Georgia has submitted its written and oral arguments to the international Court of Justice in compliance with the schedule set by the Court. From 13 to 17 September 2010, the Court held a public hearing on the case, where both sides presented their respective positions. At this stage, the deliberations on jurisdiction for consideration of the case by the Court are pending. Therefore, we will refrain from rebutting the legal arguments voiced earlier in this Hall. Georgia's written and oral submissions are fully available on the website of the International Court of Justice. We have full confidence in the International Court of Justice and respect for its rules and procedures.

This conflict has generated almost two decades of human suffering, and the Court is the last resort and symbol of justice for hundreds of thousands of Georgians who have been denied their basic rights, including their right to return to their homes. There is a dispute between Russia and Georgia under the International Convention on the Elimination of All Forms of Racial Discrimination, and the International Court of Justice is the most appropriate forum for the resolution of that dispute. In conclusion, I would like to reiterate our strong support for the Court in its role as the principal judicial organ of the United Nations. As has been mentioned here, the Court plays a vital role in the peaceful settlement of international disputes and in strengthening the international legal order.

**Mr. Argüello** (Nicaragua) (*spoke in Spanish*): Before making our comments, allow me to express, on behalf of the Government of Reconciliation and National Unity, the deepest condolences of the people of Nicaragua in view of the untimely passing of the former President of Argentina, Néstor Kirchner.

Nicaragua expresses its gratitude to His Excellency Judge Hisashi Owada, President of the International Court of Justice, for his report (A/65/4). The fact that the judicial year of 2009 to 2010 was a year of great activity and that it is anticipated, moreover, that the next year will be equally intense, confirms the relevance of the International Court of Justice as the principal judicial organ of the United Nations and as the only international court of a universal character with general jurisdiction.

In this regard, we underscore that the work of the Court contributes not only to the promotion, strengthening and spread of the rule of law but also to the enhancement of global security, as it promotes the settlement of disputes by peaceful means, which is the fundamental purpose of the United Nations and the permanent hope of humankind.

We regret the fact that to date, as is reflected in the report, only 66 States have recognized the compulsory jurisdiction of the Court and that, furthermore, a number of those recognitions contain reservations, which in many cases render the acceptance of that jurisdiction meaningless. We encourage all States that have not yet done so to recognize the jurisdiction of the Court and, thus, to contribute to the strengthening of the rule of law at the international level.

Nicaragua has anchored its international relations in friendship, solidarity and reciprocity among peoples and that is why we have not only recognized the principle of the peaceful settlement of international disputes through the means available under international law, but have also made use of those means on many occasions and continue to do so. In the past 26 years, Nicaragua has participated as a plaintiff or as a defendant in seven major cases and a number of smaller cases brought before the Court. Those matters range from the cases of the military and paramilitary actions in and against Nicaragua in *Nicaragua v. the United States of America*, decided by the Court in June 1986, to the current pending case of *Nicaragua v. Colombia*, in which public hearings were held last week in order to address the applications to testify submitted by both Costa Rica and Honduras. Nicaragua has thus not demonstrated not only its confidence in international justice by responding to its call and availing itself of it on repeated occasions, but also its willingness to make proposals to strengthen and promote mechanisms for the peaceful settlement of disputes.

In that regard, allow us to recall that the initiative to declare the United Nations Decade of International Law was launched by Nicaragua, which presented that initiative through the Non-Aligned Movement in 1988. That initiative contained a fundamental element, namely the promotion of universal compulsory mechanisms for the peaceful settlement of disputes, in particular through recourse to the International Court of Justice. A ministerial meeting of the Non-Aligned Movement was convened to that end, in The Hague in June 1989, which culminated in a declaration by more than 80 Member States, representing at that time a significant majority of the membership of the United Nations, which included the adoption of an initiative to present the proposal of the Decade of International Law to the General Assembly.

The raison d'être of that initiative was to restore the spirit that had imbued the first two International Peace Conferences, convened in The Hague in 1899 and 1907, which sought to establish a universal compulsory mechanism for the peaceful settlement of disputes. That mechanism, which could not in the end be established at those first Conferences, is today crystallised in the International Court of Justice, and our work today is to ensure that the Court truly becomes a universal compulsory mechanism without any loopholes that could hamper the compulsory nature of its jurisdiction and with the proper resources to guarantee compliance with its decisions.

Nicaragua is of the view that what has not been possible to establish in the past, owing perhaps to the international situation that prevailed at the end of the 1980s, should be taken up again in order to promote the universal acceptance of the compulsory jurisdiction of the Court. To that end, Nicaragua, once again, will take steps to revive that 25-year-old initiative.

In conclusion, my delegation would like to express its great satisfaction with the work of the Court and convey, once again, our gratitude to President Owada for the presentation of this report.

**Mr. Martinsen** (Argentina) (*spoke in Spanish*): Before I begin, I would like to thank the representative of Nicaragua, who took the floor before me, for the words of condolence and sympathy that he expressed to the nation of Argentina in relation to the untimely passing yesterday morning of the former head of State, Néstor Kirchner, who led the Argentines between 2003 and 2007 and who was the spouse of our current head of State, Cristina Fernández de Kirchner. We are grateful for those remarks as well as for all the other expressions of condolences that we have received since this sad event.

Before proceeding, the Argentine delegation would like, first and foremost, to commend the recently elected judges to the International Court of Justice, Ms. Xue Hanqin and Ms. Joan Donoghue, for their election. The Republic of Argentina wishes them the greatest success in their endeavours.

Argentina also thanks the President of the International Court of Justice, Mr. Hisashi Owada, for the presentation of the report (A/65/4) of the Court on its work during the past year, in particular, with regard to the case between Argentina and Uruguay on the construction of pulp mills on the left bank of the River

Uruguay, in which the Court issued its judgment this past 20 April.

In relation to that case, the Argentine delegation recalls that Argentina had initiated the proceedings before the International Court of Justice in connection with the violation by Uruguay of its procedural and substantial obligations under the Statute of the River Uruguay of 1975 in authorizing, unilaterally and without prior consultation, the construction of two pulp mills and a port terminal on the left bank of the River Uruguay in disregard of its obligations in terms of information and prior consultation provided for in the Statute, as well as in connection with the considerable harm done to the River Uruguay and its riparian areas as a result of the functioning of one of mills, the Orion plant, although the other mill, that of the Empresa Nacional de Celulosas de España, was not, in the end, constructed.

As recalled by the President of the International Court of Justice in his statement this morning, the Court found that Uruguay had, as claimed by Argentina, repeatedly violated the rules of the Statute by failing to inform the Administrative Commission of the River Uruguay (CARU) before granting authorization for the construction of the plants and the port terminal and by failing to notify Argentina of those projects through the Commission.

With regard to the President's statements concerning scientific evidence, which, as he indicated, was extensively presented by the parties, Argentina concurs that the evaluation of reports of that kind can be particularly complex, especially if they contain divergent arguments and conclusions. In that regard, Argentina agrees that, in controversies related to the environment in which it is increasingly necessary to assess complex scientific evidence, it will be difficult for the Court to arrive at a conclusion without recourse to the tools provided by the resolution concerning the internal judicial practice of the Court of 1976, which President Owada mentioned. Beyond that, it is also relevant to mention the provisions of Article 50 of the Statute of the Court and of article 67 of its rules. In that light, clearly the Court should in our case have considered the technical problems and arguments, with the assistance of objective technical experts, so as to form its own opinion on the scientific evidence provided.

Perhaps because it did not bring those means to bear, the Court in our case — despite the scientific evidence provided by Argentina — could not conclusively establish Uruguay's violation of the substantive norms of the 1975 Statute and the significant harm already done to the River Uruguay and its surrounding areas.

Nevertheless, the Argentine delegation wishes to underscore the importance of paragraph 281 of the Judgment, in which the Court instructs both parties as follows:

(*spoke in English*)

> "[T]he Court points out that the 1975 Statute places the Parties under a duty to co operate with each other, on the terms therein set out, to ensure the achievement of its object and purpose. This obligation to co operate encompasses ongoing monitoring of an industrial facility, such as the Orion (Botnia) mill. In that regard the Court notes that the Parties have a long-standing and effective tradition of co operation and co ordination through CARU. By acting jointly through CARU, the Parties have established a real community of interests and rights in the management of the River Uruguay and in the protection of its environment. They have also coordinated their actions through the joint mechanism of CARU, in conformity with the provisions of the 1975 Statute, and found appropriate solutions to their differences within its framework without feeling the need to resort to the judicial settlement of disputes provided for in Article 60 of the Statute until the present case was brought before the Court."

(*spoke in Spanish*)

Argentina is pleased to report that, in order to start the implementation of the mandate provided by the Court in paragraph 281 of its Judgment, Argentina and Uruguay have concluded agreements at the presidential and ministerial levels for implementing a plan for the continuous monitoring of the functioning of the Orion (Botnia) pulp mill — currently owned by UPM — and of its effects on the River Uruguay.

**Mr. Morejón** (Ecuador) (*spoke in Spanish*): First of all, allow me to express solidarity — as many have this morning and this afternoon — with our brother country Barbados for the untimely passing of its Prime

Minister David John Howard Thompson, who has left this world too soon, and to express the solidarity of the people and Government of Ecuador with the people and Government of Barbados, especially Mr. Thompson's family.

We must also take this opportunity to express our solidarity with Argentina. We were deeply affected by the news of the passing of our friend and colleague Néstor Kirchner. Yesterday, the President of the Republic of Ecuador, in his capacity as the pro tempore Chair of the Union of South American Nations, issued on behalf of the people and Government of Ecuador a statement of solidarity with the people and Government of Argentina, in particular to Cristina Fernández and her children. May Mr. Kirchner rest in peace.

The delegation of Ecuador wishes to convey its particular gratitude to the President of the International Court of Justice, Mr. Hisashi Owada, for the valuable report he has submitted on the work of the International Court of Justice over the past year (A/65/4), which sets out the important work accomplished by the Court in addressing many delicate cases under its jurisdiction. Ecuador wishes also to gratefully acknowledge the work of Judges Shi Jiuyong and Thomas Buergenthal, whose contributions now form part of the acquis and prestige of the Court, and welcomes the appointment of the new Judges of the Court, Ms. Xue Hanqin and Ms. Joan Donoghue, to whom we wish every success as they take up their sensitive duties.

The variety of legal disputes brought before the Court reaffirms the prevailing confidence in the procedures of that fundamental organ of the United Nations. Moreover, we cannot but note from Mr. Owada's report that a third of the issues and disputes currently under consideration by the Court involve countries of the Latin American and Caribbean region, which shows that our region is firmly committed to compliance with international law and above all to the principle of the peaceful settlement of disputes.

Ecuador recognizes the jurisdiction and competence of the International Court of Justice, based on the constitutional principle of the recognition of international law as a norm governing conduct. In that vein, we underscore the importance that we attach to the advisory function of the Court, given that its opinions are a fundamental basis for the undertakings of the United Nations as a whole.

We agree with those delegations that today have stressed the need to ensure that the Court is equipped with all necessary resources, both human and material, if it is to handle the increase in its workload and responsibilities. Ecuador also commends the Court's outreach activities targeting international public opinion about its work. This also reflects a genuine dissemination of international law.

To conclude, we wish to underline the importance of Mr. Owada's words when he notes in his statement that

> "[i]t is no exaggeration to say that the rule of law now permeates every aspect of the activities of the United Nations, from the maintenance of peace and security to the protection of human rights, and from the fight against poverty to the protection of the global environment, including the case of climate change" (*A/65/PV.38*).

We therefore share the view that in the realm of action, the role of the International Court of Justice is fundamental.

**Ms. Adams** (United Kingdom): The United Kingdom thanks President Owada for his comprehensive and thorough report on the work of the International Court of Justice during the past 12 months (A/65/4) and for his statement this morning.

I would like to start by reaffirming the United Kingdom's strong support for the International Court of Justice in the vital role it plays as the principal judicial organ of the United Nations. The four new contentious cases initiated this year, which involve States from Australasia, Latin America, Africa, Europe and Asia, underline the continuing confidence that States place in the Court as a forum for dispute resolution. The range of cases also illustrates that the International Court of Justice is truly a world Court whose jurisdiction is respected in all parts of the globe. That fact has been further emphasized by the numerous expressions of support for the Court during our debate today.

The past 12 months have been a busy year for the Court. The trend of an increasing workload shows no sign of abating. Against that background, the United Kingdom welcomes the Court's continued commitment to enhancing its efficiency and re-examining its

procedures and working methods, and we congratulate the Court again on having cleared its backlog of cases. However, the annual report also notes that the cases referred to the Court are growing in factual and legal complexity. It may therefore be that the Court will need to explore further reforms to enable it to continue to deal with such complex cases in an efficient and effective manner.

The United Kingdom believes that the role played by the Court would be further enhanced if more States were to accept its compulsory jurisdiction. We note that the number of States accepting compulsory jurisdiction still stands at 66, including the United Kingdom itself. We continue to encourage other States to accept the Court's compulsory jurisdiction while acknowledging that other mechanisms exist for dispute resolution.

Briefly, with regard to the advisory opinion on the *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*, the United Kingdom has noted the views of other delegations expressed during this debate. The United Kingdom does not dispute that Security Council resolution 1244 (1999) remains in force, but we do not draw the same conclusion from that fact as others. We welcome the Court's affirmation that Kosovo's declaration of independence did not violate international law, and we believe that the opinion's publication should mark an end to discussions on Kosovo's status.

In conclusion, I would like to reiterate the United Kingdom's sincere appreciation for the work of the International Court of Justice and to assure President Owada of the United Kingdom's continued strong support for the important role played by the Court in the international system.

**The Acting President** (*spoke in Spanish*): The representative of Serbia has requested to speak in exercise of the right of reply. May I remind her that statements in the exercise of the right of reply are limited to 10 minutes for the first intervention and to 5 minutes for the second intervention, and should be made by delegations from their seats.

**Mrs. Lalic Smajevic** (Serbia): My delegation would like to exercise its right of reply in response to the statement that has just been made by the representative of the United Kingdom and other remarks and comments on the Court's advisory opinion on *Accordance with international law of the unilateral declaration of independence in respect of Kosovo*.

We believe that opening a debate on the Court's opinion on an issue of great sensitivity and complexity in the light in which it was not meant to be understood can only be counterproductive and misleading, not only in this case but in numerous similar cases of ethnically based separatism in the world.

Let me point out that the Court stated in paragraph 51 of the opinion that it took a "narrow" approach to the question of the General Assembly. The Court in particular underlined that its advisory opinion does not deal with the legal consequences of the unilateral declaration of independence of Kosovo and that it does not address the validity of the legal effects of the recognition of Kosovo by third States.

It is precisely within this scope and meaning of the question that the Court, in paragraph 84 of the advisory opinion, stated that "the Court considers that general international law contains no applicable prohibition of declarations of independence". On that basis, the Court concluded that the declaration of independence of 17 February 2008 did not violate general international law.

Furthermore, it should be noted that the Court did not consider that it was necessary to address such issues as whether or not the declaration has led to the creation of a State or the status of the acts of recognition in order to answer the question of the General Assembly.

In this context, it should be noted that the Court clearly specified in paragraph 56 of the advisory opinion that the Court is not required by the question it has been asked to take a position on whether international law confers a positive entitlement on Kosovo to unilaterally declare its independence or a fortiori on whether international law generally confers an entitlement on entities situated within a State unilaterally to break away from it.

The Court underlined that it is entirely possible for a particular act, such as a unilateral declaration of independence, not to be in violation of international law without necessarily constituting the exercise of a right conferred on it. Additionally, by its advisory opinion, the Court reaffirmed that both Security Council resolution 1244 (1999) and the Constitutional Framework of Kosovo promulgated by the Special

Representative of the Secretary-General are in force and continue to apply.

With this in mind, it is clear that the province of Kosovo remains a territory subject to an international regime whose final status is undetermined, since the political process designed to determine Kosovo's future, envisaged in paragraph 11 (a) of resolution 1244 (1999), has not run its course.

**The Acting President** (*spoke in Spanish*): May I take it that it is the wish of the General Assembly to conclude its consideration of agenda item 70?

*It was so decided.*

**Agenda item 73**

**Report of the International Criminal Court**

**Note by the Secretary-General (A/65/313)**

**Report by the Secretary-General (A/65/315)**

**The Acting President** (*spoke in Spanish*): I give the floor to Mr. Sang-Hyun Song, President of the International Criminal Court.

**Mr. Sang-Hyun Song**: It is a great honour for me to address the General Assembly for the second time as the President of the International Criminal Court (ICC) and to present the Court's sixth annual report to this forum (see A/65/313).

At the outset, I would like to offer my deepest condolences to the Republic of Barbados on the untimely passing of The Honourable Mr. David John Howard Thompson, the late Prime Minister of that great country.

The past year has been very eventful for the Court, including the first Review Conference of the Rome Statute, the first arrest warrant issued for the crime of genocide, the first situation brought to the Court at the Prosecutor's own initiative, the start of the second trial, and the voluntary appearance of three suspects before the Court, as well as the first decision declining to confirm charges against a suspect. Since my last briefing to the General Assembly (see A/64/PV.29), four more nations have joined the ICC, bringing the total number of States parties to 114. I warmly welcome Bangladesh, Seychelles, Saint Lucia and Moldova into the ICC family of countries dedicated to justice and ending impunity.

Despite the impressive progress that has been achieved, significant challenges remain before us, especially with respect to the cooperation of States, which is the backbone of the ICC's work. Since members have the Court's report (see A/65/313) before them, I will focus my remarks on a few key areas. First, I will discuss the landmark event of this year: the Review Conference of the Rome Statute held in Kampala, Uganda. Secondly, I will give an update on the activities of the Court, including a discussion of the challenges posed by State cooperation and a review of our work with respect to victims. Thirdly, I will discuss progress towards the global impact of the Rome Statute.

The first Review Conference of the Rome Statute was held from 31 May to 11 June in Kampala. In accordance with the Statute, the Review Conference was convened by the Secretary-General. "The old era of impunity is over", he said in his memorable opening speech, and continued, "In its place, slowly but surely we are witnessing the birth of a new age of accountability". The main agenda item was the possible amending of the Rome Statute with respect to the crime of aggression, which States were unable to agree upon at the Rome Conference in 1998. An agreement was reached on the last day with the adoption of a definition of the crime of aggression based on General Assembly resolution 3314 (XXIX) of 1974. The Court's ability to exercise jurisdiction over the crime of aggression will be subject to a new decision to be taken by States parties after 1 January 2017.

A pledging ceremony and a stocktaking exercise were held in Kampala, creating significant potential for further enhancing the effectiveness of the Rome Statute system. The three key areas that require continued attention are cooperation with the Court, strengthening national jurisdictions under the principle of complementarity, and global ratification of the Rome Statute. The Review Conference was a powerful reminder of the strong connection between the United Nations and the Court. Several high-level United Nations officials participated in the stocktaking on international criminal justice in Kampala, drawing attention to the invaluable role that the United Nations plays in promoting the rule of law, peace and justice in the world.

Let me now proceed to the update on the activities of the Court. Its first trial, that of Mr. Thomas

Lubanga Dyilo, is approaching its conclusion. He is charged with the recruitment of child soldiers under 15 years of age into forces under his command and with using them in hostilities in the Democratic Republic of the Congo. Mr. Lubanga's defence began presenting its evidence on 7 January.

The second trial before the Court started on 24 November 2009. This is the case of Mr. Germain Katanga and Mr. Mathieu Ngudjolo Chui, two alleged former military leaders charged with murder, rape, attacks on civilians, the use of children in hostilities and a number of other war crimes and crimes against humanity allegedly committed in the Democratic Republic of the Congo.

With respect to the situation in the Central African Republic, Mr. Jean-Pierre Bemba Gombo is charged with murder, rape and pillage in his alleged capacity as a military commander. His trial is now ready to start, after the Appeals Chamber dismissed a challenge last week to the admissibility of the case before the Court. The trial will begin on 22 November. This decision is but one example of the growing body of jurisprudence that is fortifying the Court's legal stability.

In the situation in Darfur, the Sudan, which was referred to the International Criminal Court by the Security Council, three people have appeared voluntarily before the Court. In one case, that of Mr. Bahr Idriss Abu Garda, the Pre-Trial Chamber declined to confirm the charges against the suspect. This clearly demonstrates the total independence of the judges and the Office of the Prosecutor from each other. The hearing on the confirmation of charges against two other persons, Mr. Abdallah Banda Abakaer Nourain and Mr. Saleh Mohammed Jerbo Jamus, is scheduled to commence on 8 December.

A new investigation was opened during the past year concerning the 2007 2008 post election violence in Kenya. Seven years after the ICC's establishment, this is the first situation brought to it at the Prosecutor's own initiative, with subsequent authorization by the Pre-Trial Chamber. Of the other four situations before the Court, three were referred by the situation countries themselves, and one by the Security Council.

Beyond the growing number of judicial proceedings unfolding in its courtrooms, the Prosecutor is continuing his investigations into the five situations before the Court. He publicly announced that he would present two new cases in the Kenya situation before the end of this year. He is also proactively gathering and analysing information on crimes that may have been committed within the jurisdiction of the Court in other situations. The Prosecutor has publicly announced that he is looking into situations concerning Colombia, Georgia, Afghanistan, Côte d'Ivoire, Palestine and Guinea.

Let me now turn to the question of cooperation with the Court, which is of paramount importance to its ability to fulfil its mandate. I am delighted to report that less than three weeks ago, the French authorities apprehended Mr. Callixte Mbarushimana, a Rwandan citizen and alleged senior member of the armed group Forces démocratiques de libération du Rwanda (FDLR), suspected of being criminally responsible for a wide range of crimes against the civilian population in the Kivu region of the Democratic Republic of the Congo. His transfer to the seat of the Court is pending.

The arrest of Mr. Mbarushimana was an excellent example of multilateral collaboration leading to concrete results in the pursuit of international justice. In addition to France, cooperation was provided by other States parties, as well as non-parties, including Germany, the Democratic Republic of the Congo and Rwanda. At the same time, the ICC Prosecutor provided cooperation to the German authorities in their investigation of other alleged senior leaders of the FDLR who were arrested in Germany last year. This is a clear example of positive complementarity in action.

After years of continuous violence in the Democratic Republic of the Congo, these latest developments provide hope for more stability and the prevention of future crimes, which is the ultimate goal of the Rome Statute system. However, another commander sought by the Court, Mr. Bosco Ntaganda, is still reported to be at large in Goma, allegedly contributing to ongoing crimes. This arrest warrant must be executed, and I call on all relevant actors to cooperate to that effect.

In total, arrest warrants issued by the International Criminal Court are outstanding against eight people. This is having a devastating effect on victims and the communities affected by the crimes under the Court's jurisdiction. Four of those avoiding justice are alleged commanders of the Lord's Resistance Army sought in connection with the

situation in Uganda; the warrants for their arrest have been outstanding for more than five years. I urge the international community to intensify its efforts to bring these people to justice.

In the situation in Darfur, two arrest warrants have been pending against Mr. Omar Hassan Ahmad Al-Bashir since the Pre-Trial Chamber in his case issued the first warrant for his arrest for genocide before the Court on 12 July. Lastly, the arrest warrants issued in 2007 against Mr. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman have still not been acted upon, and on 25 May the ICC Pre Trial Chamber decided to refer the matter of the Sudan's non-compliance with its obligation to cooperate with the Court to the Security Council.

Additionally, in August, the ICC Pre-Trial Chamber informed the Security Council and the ICC Assembly of States Parties, of Mr. Al-Bashir's visits to two States parties, Kenya and Chad, despite the Court's outstanding arrest warrants against him. The transmittal of this question to the Security Council and the Assembly of States Parties underlines the purely judicial nature of the Court, which is safeguarded by the option to refer matters with potential political implications to the appropriate political bodies for their consideration.

The situation with respect to the outstanding arrest warrants is deeply troubling. As the Assembly knows, the ICC is completely reliant on State cooperation in the enforcement of its orders and decisions. If States do not provide the cooperation necessary for the Court's functioning in accordance with their legal obligations, the Court will not be able to fulfil its mandate and impunity will continue to flourish.

The ICC's engagement with victims is of unprecedented value and is steadily expanding. One of the greatest innovations of the Rome Statute was to allow the participation of victims in the proceedings even when they are not called as witnesses. In the countries where we have active cases, the ICC's outreach programme communicates with the local population, informing victims of their rights and helping communities generally understand the Court's mandate and proceedings.

We also have the Trust Fund for Victims, which was established, pursuant to the Rome Statute, to collect voluntary contributions and to administer reparations ordered by the Court as a result of its trials, as well as to provide physical and psychological rehabilitation and other support for the benefit of victims and their families, even before judicial proceedings are concluded. This strikes me as a most important quality of the Trust Fund for Victims — the ability, at a very early stage, to engage in support of the victims of crimes in situations before the Court.

At present, the Fund is reaching out to more than 40,000 direct and many more indirect beneficiaries in the Democratic Republic of the Congo, Northern Uganda and, as of next year, the Central African Republic. In Ituri, for example, the Fund has been supporting an accelerated learning programme and a day-care centre for girls who have been abducted and raped and who have given birth while in captivity. For these young women, their babies can be a source of stigma, an impediment to their education and a constant economic burden. The Trust Fund-supported school gives these girls a chance to regain the education they lost while in captivity and to develop a positive bond with their children.

This example demonstrates the unique role of the Trust Fund at the crossroads of international justice and humanitarian concern for victims, acknowledging their plight and restoring their human dignity. I consider the actions of the Fund to be highly relevant to the ICC's overall mission and worthy of the continued financial support of States and other donors.

As the Secretary-General said at the opening of the Review Conference, the ICC must have universal support if it is to become an effective deterrent. While it is remarkable that as many as 114 States from all regions of the globe have joined the Statute, the fact remains that large parts of the world's population are for the time being outside the protection offered by the ICC system.

I hope that non-States parties will consider possible ratification of the Statute with an open mind. The lack of legal capacity should not be an obstacle for ratification. Technical assistance for that purpose is widely available from a variety of sources. Joining the ICC not only sends out a strong signal of commitment to the rule of law, peace and justice, but it also gives the State in question the right to participate fully in the ICC's work. Elections for the post of Prosecutor and six vacancies for judges will be held in 2012; now

would be an excellent time to join and shape the future course of the ICC's development.

Let me recall that the ICC is not intended to substitute for national justice systems. The Rome Statute makes it very clear that national criminal jurisdictions have the primary responsibility for the prosecution of international crimes, the ICC being merely a safety net. The domestic justice systems of each State should be so well equipped to deal with international crimes that they serve as the main deterrent worldwide. This, I believe, is an objective shared by all States, whether they are parties to the Rome Statute or not.

The Review Conference created significant momentum for broadening and deepening the Statute's influence with respect to national jurisdictions, but that is merely the beginning. Far more needs to be done, and I am glad to see discussion starting on the mainstreaming of Rome Statute issues into rule of law and judicial reform capacity-building. The United Nations is uniquely placed to facilitate that process.

Another momentous year is behind us, and the ICC has continued its progress on many fronts. This would not have been possible without the relentless commitment of the international community, for which I am deeply grateful. Let us continue to build on our shared values so that we may move a step closer to eradicating impunity for the gravest crimes of concern to all of humanity. Member States should embrace the ICC — it is their court.

**Mr. Grauls** (Belgium) (*spoke in French*): I have the honour to speak on behalf of the European Union. The candidate countries Croatia and the former Yugoslav Republic of Macedonia; the countries of the Stabilization and Association Process and potential candidates Albania, Bosnia and Herzegovina and Montenegro; and the Republic of Moldova, Ukraine and Georgia align themselves with this statement. The European Union thanks the International Criminal Court (ICC) for its sixth annual report to the United Nations covering the period 1 August 2009 to 31 July 2010 (see A/65/313).

This year, four new States from four different continents — Bangladesh, Seychelles, Saint Lucia and the Republic of Moldova — joined the circle of States parties to the Rome Statute, bringing that number to 114. The European Union welcomes the new members and pledges to continue its efforts to achieve universality and preserve the integrity of the Rome Statute.

During the period under consideration, the ICC launched an investigation into a new situation, that of Kenya; it conducted three trials; and in relation to the situation in Darfur, it took a decision declining to confirm charges against a suspect, organized the voluntary appearance of two other suspects, and issued a second arrest warrant for President Al-Bashir on charges of crimes of genocide.

Moreover, the Prosecutor initiated preliminary investigations into several incidents that the international community had forcefully condemned, including the atrocities committed on 28 September 2009 in Conakry, Republic of Guinea. Despite certain difficulties, the past year has seen the Court make fresh progress towards meeting the hope placed in it by the States parties and the victims of the most serious crimes.

In the year of the reporting period, the first Review Conference of the Rome Statute was convened from 31 May to 11 June in Kampala by the Secretary-General in his capacity as depositary of the Rome Statute. The European Union thanks the Ugandan authorities and commends their efforts in organizing that event in their country. The warm welcome and the positive and constructive spirit manifested by all delegations present were certainly instrumental to its success.

The Kampala Conference successfully concluded its discussions on three amendments to the Rome Statute: the first on article 124, the second aimed at extending the Court's jurisdiction over war crimes in situations of non-international armed conflict, and the third on the crime of aggression. The European Union commends the spirit of consensus that has prevailed and has enabled a final agreement to be reached. We can now say that the work initiated in Rome has finally reached fruition.

Furthermore, the first Review Conference of the Rome Statute was a major milestone that provided a forum for the States, international organizations and representatives of civil society in attendance in Kampala to reaffirm their resolve to promote the Statute, make specific pledges to that end and submit themselves to a stocktaking of international criminal justice. That stocktaking addressed four fundamental issues in the Rome Statute system and culminated in

the adoption of two resolutions and a declaration. It also clearly identified the areas on which we ought to concentrate our efforts.

Nevertheless, the recent report of the ICC, while commendable insofar as it describes the efforts the Court has made in fulfilling its mission, raises serious questions. The number of acts of violence that continue to be perpetrated, in particular against women and children and including in country situations of which the ICC is seized, is extremely worrying. The international community must concentrate its efforts to ensure that the Court is effective in punishing those crimes and preventing them in the future.

In that regard, we should recall one of the fundamental principles of the Rome Statute, namely, complementarity, according to which it falls first and foremost to each State to investigate and prosecute the presumed perpetrators of the most serious crimes against the international community. The Court may exercise its powers only in the event that a State is unable or unwilling to do so. The European Union and its member States are determined to carry out their commitments to that end for the effective implementation of the Rome Statute.

The Court's report underlines, in particular, the need to reinforce our collective and individual efforts to ensure that the international arrest warrants issued by it are enforced. Particularly in that regard, the European Union also recalls that Security Council resolution 1593 (2005) imposed obligations on a non-State party, namely, the Sudan, to cooperate with the Court. The European Union regrets the infringements by the Sudan of its international obligations and commends the reaffirmation by the Kampala Review Conference of the need for all States parties to fully meet their obligations under Part 9 of the Rome Statute. Accordingly, it expresses its concern about the difficulties raised by certain States parties in relation to the enforcement of those obligations.

Unless all the stakeholders in the international community, ranging from States, whether parties or not, to international organizations to civil society, put up a united fight, the objectives of the Rome Statute, and more generally, the purposes and principles of the United Nations Charter aimed at promoting international peace, security and international well-being will not be achieved. Despots will continue to live in impunity and use their influence to continue their activities unchallenged. As for the victims, they can only hope that justice will be done and that they will receive some form of compensation.

The support that the Court receives from the United Nations is broadly described in the Court's report. The European Union welcomes that support and calls on other international organizations to follow that example by stepping and formalizing their cooperation.

The European Union and its member States undertake for their part to pursue their efforts in the area of the fight against impunity, in particular by giving the Court all the diplomatic support it needs and by continuing dialogue with its different partners to clear up any misunderstandings and dispel any concerns. The European Union has been relentless in its efforts to date and undertakes to pursue them.

**Mr. Kapambwe** (Zambia): Let me begin by conveying the condolences of my Government to the Government of Barbados on the recent passing of the Prime Minister and to the Government of Argentina on the passing of the former President.

At the outset, the African States parties to the Rome Statute wish to affirm their support for the fight against impunity and assert that those who are implicated in the most serious crimes must be brought to account. We are committed to the universality of the Rome Statute and call on all States to ratify it.

The African States parties welcome the sixth annual report of the International Criminal Court (ICC) as submitted to the United Nations in document A/65/313.

The first-ever Review Conference of the Rome Statute of the ICC, which took place in Kampala from 31 May to 11 June 2010, can be seen as a critical milestone in the evolution of international criminal justice, as it amended the Rome Statute to include a definition of the crime of aggression and the conditions under which the Court could exercise jurisdiction with respect to that crime. The Kampala Review Conference should also be seen as a continuation of the legacy of Rome, as we, States parties, continue to strive for a more humane world in which we do not commit heinous crimes against one another and in which we can impose severe sentences on those who breach the minimum standards of treatment that we have set for ourselves.

Turning to the issue of cooperation, we concur with those who say that the fact that all five of the Court's current situations are in Africa, three of which were self-referrals, is not a negative reflection on the continent. On the contrary, it illustrates the high regard that those States have for the protection and promotion of the rule of law in that they have availed themselves of the judicial assistance provided by the Court in cases which, owing to their complexity and/or political sensitivity, lend themselves to being better dealt with by the Court.

But we also need to avoid the perception of seeing the ICC as targeting Africa. A central complaint by some African officials is that the ICC's exclusive focus on investigations in Africa to date suggests that the Court is unfairly targeting Africa. But this complaint should not obscure the consistent, active backing for the ICC among African Governments and civil society across the continent.

It is well known that African Governments were actively involved in establishing the ICC. More importantly, more States are parties to the Court in Africa than in any other region. This August, yet another African State, the Seychelles, ratified the Rome Statute, bringing the number of African States that have done so to 31. In addition, at the first Review Conference of the ICC in May and June in Kampala, African Governments reinforced strong African support for the Court's work. African States parties participated actively, often represented by high-level officials, and made strong statements in support of the work of the Court.

However, we should bear in mind that much of the African Union's concern with regard to the ICC relates to the Security Council's inaction. The African Union has premised its call for non-cooperation with the ICC on the Security Council's ignoring its July 2008 request to defer the case against President Al-Bashir of the Sudan. Even among officials who strongly support the ICC concern has mounted that the Security Council has shown disrespect for the African Union by failing to respond either positively or negatively to its deferral request. Resolution of this issue is the only way to facilitate cooperation between the African Union and the ICC.

In the light of the foregoing, we implore all stakeholders to become activists and urge the Security Council to respond to the request by the African Union. The integrity of the Court and even that of the Security Council itself is at stake.

The important role played by international criminal justice as embodied in the work of the Court and similar criminal tribunals, such as the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the former Yugoslavia and the Special Court for Sierra Leone, in establishing respect for the rule of law, thus bringing about peace, order and stability in conflict-torn societies, is one of the greatest achievements of our time.

The African States parties welcome the efforts made by the Court to further implement its strategic plan and to foster cooperation with States and international and regional organizations. Those steps are vital, if the activities of the Court are to be understood and appreciated by the diverse constituencies that it was created to serve. In that regard, the African States parties reiterate their commitment to the objectives of the ICC and call for the establishment of a suitable mechanism to enhance cooperation between the Court and States parties.

On the issue of geographical representation and gender balance in the recruitment of ICC staff, the African States parties would like to see that nationals of all States parties are given equal opportunity to work at the Court. The system of recruitment should not be based on how much a State party contributes to the Court, since the Court is an independent judicial institution. It is worth noting that all the situations that the Prosecutor is now handling are situated in the territories of least developed countries. It must therefore be ensured that those countries are adequately represented at senior levels in the Court. Justice must not only be done, it must be seen to be done. Therefore, the ICC, being at the peak of criminal justice globally, should be seen to be fair, not only in its decisions, but also in its recruitment policies.

The African States parties will continue to cooperate and support the ICC and call on all States parties to identify well-qualified personnel for appointment to the bench and other positions of the Court, which would enhance the efficiency of the Court. The Court must remain independent and free from any kind of political interference, so that its decisions can in turn be universally respected.

**Mr. Charles** (Trinidad and Tobago): First of all, we wish to express our appreciation to those

delegations that offered words of condolence on the death of the Prime Minister of Barbados and join others in expressing our own condolences to the delegation of Argentina on the death of its former President.

I have the honour of speaking today on behalf of the States members of the Caribbean Community (CARICOM) that are parties to the Rome Statute of the International Criminal Court (ICC). We commend the President of the Court for the presentation of his comprehensive report prepared under article 6 of the Relationship Agreement between the United Nations and the ICC (see A/65/313). CARICOM States parties view the report as an important instrument to convey essential information on the activities of the Court during the preceding year, not only for the benefit of States parties, but also for the benefit of the wider membership of the United Nations.

During the reporting period, States parties and others witnessed the hosting in Kampala of the Review Conference of the Rome Statute, a landmark occasion that was eagerly anticipated. It provided an opportunity for States parties and other entities to recommit themselves to the principles that led to the adoption and conclusion of the Rome Statute and the establishment of the Court.

CARICOM States parties were represented at the Conference both at the level of States parties and signatory States and through the CARICOM secretariat. Our representation was a demonstration of our resolve to assist the Court in its mandate to prosecute those alleged to have committed grave crimes under the Rome Statute and to contribute to the promotion and maintenance of international peace and justice.

The Conference also provided an ideal forum for engaging in an exercise of stocktaking with regard to international criminal justice. We found the exchanges on the issue of cooperation to be very useful. For us, the principle of cooperation is essential to the long-term success and survival of the Court. Without the cooperation of States parties and others in areas such as witness protection, enforcement of sentences, and most importantly, the execution of outstanding arrest warrants, the Court will be unable to bring to justice the principal offenders who commit genocide, war crimes and crimes against humanity. CARICOM States parties were thus encouraged that among the many pledges made at the Conference were the expressions of the willingness of States and others to cooperate with the Court. We hope that those pledges will be fulfilled as soon as possible.

Pursuant to the provisions of articles 121 and 123 of the Statute, the Conference considered proposals for amendments submitted by States parties. It was gratifying to witness the exchange of views in both the plenary and the informal sessions of the Conference on the various proposals. CARICOM States parties and observers were satisfied with the open and transparent manner in which the consultations were conducted. As strong supporters of the rule of law at both the national and the international levels, we welcomed the amendment to article 8, paragraph 2(e), of the Rome Statute. It is our view that that amendment has strengthened existing international humanitarian law, and we therefore pay tribute to the delegation of Belgium for proposing that very timely amendment.

Since the beginnings of the discussions on the ICC, CARICOM has been encouraged by the willingness of participants to work in a spirit of compromise. Consequently, while we were among the advocates for the removal of article 124 of the Statute, we recognized that the decision on that topic was reached after tremendous debate and in a spirit of compromise. Nevertheless, it is our expectation that, when the matter is reviewed in 2015, States parties will recognize that provision as being anachronistic, tantamount to a reservation, and will therefore agree to its deletion.

In 1998 at the Rome Diplomatic Conference on the ICC, States parties agreed to include the crime of aggression under article 5 of the Statute but did not agree on a definition of the crime and the conditions under which the Court would be able to exercise jurisdiction of that crime. The matter was left to a future event. That event was the Kampala Review Conference, which ended a process that included the work of the Special Working Group on the Crime of Aggression, the intersessional meetings at Princeton University as well as other forums.

After exhaustive discussions spanning many years on the utility, practicality or timing of the adoption of a definition of the crime of aggression, a breakthrough was achieved at the Review Conference. While some delegations remain dissatisfied with the outcome and ask whether we have arrived at a less than

perfect solution, CARICOM States parties are satisfied that the Rome Statute has been duly amended through the relevant provisions of articles 8 bis, 15 bis, and 15 ter. More importantly, article 5, paragraph 2, has been deleted forever. The Statute now provides a definition of the crime of aggression and for State party referral, *proprio motu* investigation by the Prosecutor, as well as Security Council referral. In our view, that represents a true spirit of compromise and a reflection of the mood of the international community at this time.

The success achieved in Uganda was due not only to the willingness of States parties to compromise, but also to the skill employed by the President of the Assembly of States parties, Ambassador Christian Wenaweser, and his team, which included Prince Zeid Ra'ad Zeid Al-Hussein, now the Permanent Representative to the United Nations of the Hashemite Kingdom of Jordan. We, as CARICOM States parties, await the convening in 2017 of the meeting at which States parties, following the prescribed procedure, will decide whether to activate the jurisdiction of the Court over the crime of aggression pursuant to the amendment that was adopted at the Review Conference.

The Court is at a critical point in its short life. We continue to observe the judicial proceedings, which are being conducted in keeping with the highest traditions of due process, the relevant provisions of the Rome Statute and other rules. We must continue to offer our support and protection to the ICC. Such protection is essential to ward off often unnecessary criticisms on the part of its detractors. That support should not only be based on our legal obligations but should also be derived from the commitment by all United Nations Member States to end impunity.

CARICOM States parties will continue to work for the universalization of the Rome Statute. During the past year we were elated that a Member State, Saint Lucia, became the latest CARICOM State party to the Rome Statute.

It is our expectation that all CARICOM States will, in the near future, become parties to the Rome Statute and complete this most important dream that was begun in 1989 by my former Prime Minister, Mr. Arthur Napoleon Robinson.

**Mr. McNee** (Canada): I have the honour to speak today on behalf of the CANZ group, namely, Canada, Australia and New Zealand. Before speaking on the International Criminal Court (ICC), may I offer the condolences of that group on the sad passing of former President Kirchner to the Government of Argentina.

The year 2010 has been a significant one for the International Criminal Court. Earlier this year, delegations from States parties, observer States, international organizations and civil society, as well as officials from other international courts and tribunals, met in Kampala for the first Review Conference of the Rome Statute. The delegations participated in a stocktaking event that gathered the world's experts on international criminal justice for a frank and sincere discussion on the topics of cooperation, complementarity, victims and affected communities, and peace and justice. We hope to see appropriate and continued follow up on those themes over the coming years.

States parties at the Review Conference also worked in a spirit of compromise with the aim of strengthening the Court and improving the international criminal justice system. They adopted, by consensus, amendments to article 8 of the Statute, as well as provisions on the crime of aggression. The adoption of the provisions on the crime of aggression marked the culmination of years of discussion and reflects the strong desire of States parties to operationalize the Court's jurisdiction in a practical and balanced manner.

States parties at the Review Conference also endorsed the Kampala Declaration, reaffirming their commitment to the basic principles of the Rome Statute and the role of the International Criminal Court in a multilateral system that aims to end impunity, establish the rule of law, promote and encourage respect for human rights and achieve sustainable peace.

(*spoke in French*)

It has become trite to say that the Court cannot effectively accomplish its mandate without the necessary cooperation from States parties and others. This past year has witnessed both accomplishments and challenges in the sphere of cooperation.

Just weeks ago, authorities in France successfully apprehended Callixte Mbarushimana, pursuant to a sealed warrant of arrest issued by the Court. Canada, Australia and New Zealand welcome that arrest and commend France for the actions that it has undertaken.

We further welcome the cooperation shown in that arrest by the Democratic Republic of the Congo and other States in the region as a concrete example of their commitment to justice.

(*spoke in English*)

The situation in the eastern provinces of the Democratic Republic of the Congo is alarming. The use of sexual violence as a weapon of war and as a tool in the systematic intimidation and control of local populations must be stopped. Canada, Australia and New Zealand call upon all parties involved to take the necessary steps to prevent the commission of such crimes and to protect civilian populations. Ensuring criminal accountability for the perpetrators is a crucial element in stopping those crimes. Those who are responsible must be brought to justice, and that includes not only direct perpetrators, but also those who are responsible for planning and coordinating such reprehensible attacks.

In that regard, Canada, Australia and New Zealand are also encouraged by the arrest of Sadoke Kokunda Mayele by United Nations and Congolese forces and urge the Democratic Republic of the Congo to continue, and to enhance, its cooperation with both the United Nations and the Court. Where necessary, the ICC can play a vital role in investigating and prosecuting those who bear the greatest responsibility for the commission of serious crimes. We also urge the Democratic Republic of the Congo to pursue domestic avenues of investigation and prosecution for other perpetrators.

We hold out hope that such recent developments may prove to be a basis for complementarity in action, with a coordinated response between the ICC, the United Nations, national authorities, regional actors and the international community as whole. It has become clear that all of those entities must work together to ensure accountability and to bring justice to victims.

While the recent arrests in relation to crimes committed in the Democratic Republic of the Congo are encouraging, we must also acknowledge that cooperation has been lacking in relation to other cases and situations. The arrest warrant for Bosco Ntaganda remains outstanding, as do the four arrest warrants for the leaders of the Lord's Resistance Army.

With regard to the arrest warrants that have been issued in the Darfur situation, namely, for Ahmad Harun, Ali Kushayb and President Omar Al-Bashir, we continue to call upon States parties to fulfil their legal obligations under the Rome Statute to cooperate with the Court in the execution of those warrants. Canada, Australia and New Zealand also note the obligation to cooperate with the Court under Security Council resolution 1593 (2005) and urge, more broadly, all States and relevant regional organizations to cooperate fully with the Court.

The early jurisprudence of the Court has demonstrated that the rights of the accused are being protected at both the procedural and the substantive levels. The legitimate place to contest charges is before the Court itself, and not in the political arena.

Looking forward, Canada, Australia and New Zealand anticipate that the upcoming ninth Assembly of States Parties will be a fruitful meeting. We anticipate further discussions on the administrative issues of budget and governance. In that respect, we underline the important role of the Assembly in providing oversight and guidance on those matters as prescribed by the Rome Statute. The Court and the Assembly must continue to work together constructively with a view to establishing and maintaining the framework of a permanent, independent institution that has the respect and confidence of the international community.

**Mr. Park In-Kook** (Republic of Korea): At the outset, I should like to express our special recognition to President Judge Sang-Hyun Song and the other staff of the International Criminal Court (ICC) for their outstanding efforts and achievements in making the Court function on a broad track. Through their work and dedication, the ICC has made a significant contribution to the attainment of the goals envisioned in the Rome Statute. The Republic of Korea welcomes the four new members and hopes that the new members will help to promote the universality of the Court and the integrity of the Rome Statute.

I should like to commend the Secretary-General's report (see A/65/313), which highlights the Court's most important work over the past year. Thus far, the Court has made notable achievements through its involvement in five situations, namely, in Uganda, the Democratic Republic of the Congo, the Central African Republic, Kenya and the Sudan.

This year, we witnessed another historic moment with the Review Conference in Kampala, where we successfully amended several provisions and discussed key issues for future implementation. The success of the Review Conference is proof that the ICC has left its fledgling stage and is now entering an era of full-scale deve'opment.

I would like to take this opportunity to welcome the new judges, Silvia Alejandra Fernández de Gurmendi and Kuniko Ozaki. We believe that the newly appointed judges will make a remarkable contribution, building on the progress made to date.

I would like to comment on the proceedings regarding the situation in the Congo. Since the first ICC arrest warrant was issued and sealed by Pre Trial Chamber I in early spring 2006, the Lubanga trial has experienced several short suspensions. I hope that, based on the assessments made so far, the ICC will be able to proceed with Lubanga and other cases, and thus move forward effectively with the deliberate speed of international criminal justice.

I would like to cite another case, that relating to the situation in Darfur, where international cooperation is still needed, despite Security Council resolution 1593 (2005) and legal obligations under the Rome Statute. In that context, I would like to draw the Assembly's attention to the importance of gathering political will in order to further the work of the ICC.

I would also like to commend the ICC for providing substantial assistance to the Special Court for Sierra Leone from its inception up until today. That shows that the ICC may be on its way to becoming a central hub for international tribunals in the future. For that purpose, further communication and coordination between the Court and the Special Tribunals is required.

Beyond all scepticism and frustration, the ICC was established to enshrine the hopes of the international community for justice. We are very pleased by the progress the Court has arduously made towards that goal. The Republic of Korea will continue to be a strong supporter of the ICC as it solidifies its place as an important international mechanism and the sole permanent criminal court.

**Mr. Sumi** (Japan): I would like to thank Mr. Sang-Hyun Song for his in depth report on the most recent work of the International Criminal Court (ICC) (see A/65/313), as well as to congratulate the Court on its increasingly important role in the fight against impunity in the international community.

The ICC was established in 2002 as the first permanent international criminal court in the history of the world, to which any State party or the Security Council could decide to refer a situation. Since the establishment of the Court, eight years ago, three States parties — namely, Uganda, the Democratic Republic of the Congo and the Central African Republic — have referred their respective situations to the ICC. The Security Council has referred one situation — that of Darfur, the Sudan — to the Court. In addition, the Prosecutor has initiated an investigation on the Kenyan situation. That progress shows that the ICC is on a path of growth. Today, we would like to raise several points on the work of the ICC.

First, one of the most important principles to be kept in mind is that of complementarity. Every State has a duty to exercise its criminal jurisdiction over those responsible for the most serious crimes. The role of the ICC is complementary to such national criminal jurisdictions. States parties must do their best to exercise their national jurisdiction over a situation before referring it to the ICC.

Secondly, the experience of the ICC, although relatively short, has reaffirmed the importance of cooperation by States. In those cases in which full cooperation has been extended by the States concerned, the ICC is making steady progress. Where such cooperation has not been forthcoming, the ICC is faced with serious challenges. Cooperation by States with the ICC is therefore essential for the effective investigation and prosecution of cases by the Court, in particular as regards the arrest and surrender of suspects and the collection of evidence.

Thirdly, Japan would like to emphasize the importance of efficient and effective administration of the Court. In that regard, Japan is of the view that States parties should seek to clarify the responsibilities of the different organs of the Court and the relationship between the Court and the Assembly of States Parties, as well as the judicial procedure of the Court.

Fourthly, it is indeed a matter of historic significance that we achieved the codification of the crime of aggression at the Rome Statute Review Conference, held in Kampala this year. In order to

make that success legally stable, we must continue our efforts to avoid, to the maximum extent possible, legal ambiguity in the amendments adopted, taking into account the nature of international criminal justice, which requires strict legal rigour.

Finally, let me return to the matter of the universality of the membership of the Rome Statute. As a result of the recent ratifications by Saint Lucia, Seychelles and Moldova, 114 States are currently parties to the Rome Statute. Japan is pleased to see the steady increase in the number of States parties. In order to enhance the role of the ICC in the international community, however, the Court's membership should be universal. It is therefore important that more States become parties to the Rome Statue, especially States in the Asian region, where the number of States parties is much lower than in other regions.

In March 2010, Japan co sponsored a round-table meeting of legal experts with the Government of Malaysia and the Asian-African Legal Consultative Organization in Putrajaya, Malaysia, that included an inaugural address by Judge Kuniko Ozaki. At that meeting, the Republic of Korea, Kenya and Japan shared with non-party States their experiences in ratifying the Rome Statute. Japan will continue its efforts to increase the number of States parties, in particular from the Asian region, with a view to achieving the universality of the ICC.

Japan sincerely hopes that the points it has raised today will be given serious consideration by the ICC, States parties, other States and civil society in order to foster an ICC that is more efficient, effective, universal and systematically sustainable.

In conclusion, let me express the sincere appreciation of Japan for the work that the ICC has accomplished to date. It is our hope that the Court will continue to work diligently in the fight against impunity and consolidate its credibility and reputation. In that regard, Japan is determined to continue and strengthen its contribution to the ICC, and thereby to the establishment of the rule of law throughout the international community.

**Ms. Gendi** (Egypt): At the outset, I would like to express Egypt's appreciation to the President of the International Criminal Court (ICC) for submitting the report under consideration today (see A/65/313). I would also like to thank the Court for playing an important role in the development of international criminal law concepts to address heinous crimes committed against peoples and societies.

International criminal tribunals are becoming increasingly important in the enforcement of the rule of law — in particular with regard to international law, international humanitarian law and human rights law — with a view to maintaining international peace and security. The role of the ICC should be complementary to that of national judiciaries, which have inherent jurisdiction to prosecute citizens who commit such crimes. That emanates from the principle of the responsibility of a State to ensure the safety and security of its citizens. It also flows from the fact that sovereignty equals responsibility — the responsibility of every nation and Government to protect their people from crimes.

Against that backdrop, Egypt is of the view that there is an increasing need to adhere to the established norm of international law by which the implementation of a convention is conditioned by a State's accession thereto. States should therefore not be obligated to follow the provisions of the Rome Statute if they have not of their own free will explicitly accepted to do so. Obliging States to act otherwise constitutes a violation of the principle of pacta sunt servanda and is incompatible with the concept of State sovereignty and the freedom of States to choose the treaties to which they become party.

In the same vein, the delegation of Egypt takes note of the outcomes of the Review Conference of the Rome Statute, convened from 31 May to 11 June in Kampala, at which States parties made significant pledges on a wide range of issues. One of those was to arrive at a definition of the crime of aggression, taking into account the importance of the issue, especially as circumstances and developments on the international scene point to the need to establish such a definition. That will enable the Court to exercise its jurisdiction over that crime in the same way that it does over the other crimes falling within its jurisdiction.

The Court can also benefit from the ongoing discussions in the International Law Commission on the immunity of State officials from foreign criminal jurisdiction, with a view to enriching the dialogue and exchange of views between international legal and judicial bodies working in the framework of multilateralism. That should serve to enhance

conformity and complementarity in the work of those bodies.

The delegation of Egypt also stresses the importance of the International Criminal Court's continued pursuit of a balanced approach in its work by adopting a policy that accentuates its judicial nature and avoids the politicization of its work, so as to ensure its impartiality and independence and to allow it to meet its legal and moral obligations.

In that regard, Egypt reaffirms the importance of the Court remaining strictly transparent. It should also refrain from recourse to confidential lists of names of accused, so as to ensure transparency and accountability.

Furthermore, the procedures for investigating, gathering evidence and authenticating documents need to be improved, especially with regard to investigating crimes and providing strong material evidence that confirms the consistency of the crimes committed and those defined in the Statute. It is of similar importance not to proceed with the legal classification of facts based on incomplete or partial examinations thereof, or on examinations that do not take all the legal considerations into account.

Consequently, the delegation of Egypt reiterates that the Court should respect the considerations to which I have referred when dealing with the African cases referred to it. Moreover, it is important that the Court consider cases from other parts of the world. Otherwise, the continued consideration of cases focused on only one region of the world may give the wrong impression, namely, that crimes against humanity are being committed only in Africa or that the Court does not target other regions where those crimes are also being committed.

In that context, Egypt expresses its concern over the consequences of the indictment by the International Criminal Court of the President of the Republic of the Sudan, taking into consideration the delicate nature of the peace processes under way in the Sudan and the ongoing efforts aimed at facilitating the early resolution of the conflict in Darfur. We also support the call by the African Union on the Security Council to defer the process initiated by the ICC in accordance with the provisions of Article 16 of the Rome Statute.

In order to avoid being selective in referring cases to the ICC, it is imperative that the Security Council not politicize its work. It is also necessary that the Prosecutor expedite the decision to begin an investigation of the crimes against humanity committed in the occupied Palestinian territories. We reaffirm the responsibility of the international community to follow up the recommendations of the report (A/HRC/12/48) of the United Nations Fact-Finding Mission on the Gaza Conflict, as recommended by the General Assembly in resolutions 64/10, of 5 November 2009, and 64/254, of 26 February 2010. In that regard, the Court should ensure that no one enjoys impunity. It should also uphold the letter of the law and the established legal norms that we all strive to implement, as well as consolidate the application of the rule of law to all peoples and communities without exception.

**Mr. Wenaweser** (Liechtenstein): I would like to thank the President of the International Criminal Court (ICC), Judge Sang Hyun Song, for presenting the report of the Court (see A/65/313) today, which illustrates the impressive range of activities in which the Court has been engaged over the past year. We are satisfied to see yet again that the Court has made further progress in its proceedings and that it continues to work in the manner in which it was conceived that it would, namely, as an independent and effective international court committed to the highest standards of justice and working within its jurisdiction and on the basis of the principle of complementarity.

As a State party to the Rome Statute, we fully respect the independence of the Court and will therefore not comment on the specifics of cases before it.

States parties have also strengthened the Rome Statute system through the successful conclusion of the Review Conference in Kampala in June.

In the area of universality, which must remain our long-term goal, we were particularly pleased about the ratifications of Bangladesh, Seychelles, Saint Lucia and the Republic of Moldova, which increased the number of States parties to 114.

The successful outcome of the Review Conference is a milestone in the development of international criminal justice. States parties were able to complete the work left unfinished by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court by adopting the amendments on the crime of aggression. I would like to thank all the negotiating

partners for their constructive engagement on this difficult issue, which allowed us to adopt both the definition of the crime of aggression and the conditions for the exercise of jurisdiction, and to do so by consensus. This is truly a historic achievement that strengthens the rule of law at the international level and goes to the core of the purpose of the Organization. In that context, I would like to thank the Secretary-General for his unwavering personal commitment to the International Criminal Court.

The Government of Liechtenstein has already taken a decision in principle to ratify the amendments on the crime of aggression as soon as possible. We hope that many other States parties will do the same. We were also encouraged by the strong participation of non-States parties in the proceedings of the Kampala Conference. We hope that some of them will find the completion of the Rome Statute useful on their way to joining it. In Kampala, we as States parties kept the promise made in Rome that we would complete the Statute at the first Review Conference.

When we adopted the Statute, in 1998, we knew that the crimes to be dealt with by the Court — genocide, crimes against humanity, war crimes and, indeed, the crime of aggression — were inextricably linked to situations of armed or political conflict, and would thus give rise to controversial and strongly held views by all those affected. Indeed, the expanding activities of the Court have evoked both strong support and adverse reactions by stakeholders involved. This is an illustration of the relevance of the activities of the Court and should not be seen as a distraction from the significant underlying consensus in the international community — whether States have already decided to join the Rome Statute or not — that there can be no impunity for the worst crimes of international concern. As our discussions in Kampala on peace and justice have shown, we all stand by this principle, while it can be difficult to apply in practice.

The Review Conference has set in motion highly productive discussions on how we can do better in implementing that principle, and has culminated in concrete commitments undertaken through the Kampala Declaration and individual pledges. The area of complementarity is where we hope that the greatest progress can be made in the near future. States parties have reaffirmed their primary responsibility to prosecute perpetrators of genocide, crimes against humanity and war crimes. National jurisdictions are at the heart of the fight against impunity. The Court has already had an important catalytic function that has led to the strengthening of national jurisdictions. We note, for example, the intention of the Democratic Republic of the Congo to try the recently arrested militia commander Mayele and other suspected war criminals in its domestic judicial system. Indeed, genuine domestic proceedings are not only an obligation stemming from the Geneva Conventions, they are also the preferred option under the Rome Statute.

The multitude of United Nations actors and others engaged in rule of law capacity-building and technical assistance play a very important role in that respect. Those efforts must be strengthened and their coordination must be improved, under the leadership of the Rule of Law Coordination and Resource Group. Again, it is important to stress that States are obliged under treaty law and customary international law to domestically prosecute genocide, crimes against humanity and war crimes, irrespective of whether they are parties to the Rome Statute or not. Improving technical assistance in that respect is thus a necessity that should be seen independently from the daily business of the Court. Indeed, it goes to the very heart of the mandate of the United Nations itself.

Cooperation is another area where progress can and must be made. The Court's effectiveness is wholly dependent on the cooperation of States, international organizations and civil society. We welcome the continued cooperation extended by States, in particular with regard to the situation in the Democratic Republic of the Congo, as recently underscored by the arrest of Callixte Mbarushimana in France.

At the same time, there is concern about the lack of support for the Court's activities in a number of other situations, most prominently the investigation mandated by the Security Council regarding Darfur. That lack of cooperation poses a challenge to the authority of the Security Council and also puts into question the legal obligations underwritten by States parties to the Rome Statute. We note in particular that no State party can be relieved of those obligations by virtue of a competing obligation outside of the Rome Statute. We therefore hope that States parties will engage in a constructive dialogue on how to improve cooperation across the board, including in situations where such cooperation entails difficult political decisions. It is also our hope that the Security Council will live up to its obligation to consider the issue of

cooperation in the one case where it has deferred a situation to the Court.

The Court continues to stand as a beacon of hope for victims of mass atrocities around the world. We are pleased that the paradigm shift reflected in the Rome Statute towards a more victim-centred approach continues to be put into practice by the Court. In that context, Liechtenstein places particular importance on the activities of the Trust Fund for Victims and has pledged to continue its financial support for it.

**Mr. Appreku** (Ghana): I wish to thank you, Madame, for giving me the floor to deliver the statement of the Ghana delegation on agenda item 73, with regard to the report of the International Criminal Court (see A/65/313). At the outset, the Ghana delegation wishes to align itself with the statement delivered by the Permanent Representative of Zambia on behalf of the African group of States parties to the Rome Statute. We would also like to make a few additional comments in our national capacity.

My delegation welcomes the sixth annual report of the International Criminal Court. The Ghana delegation wishes to commend the President of the Court, His Excellency Judge Sang Hyun Song, for his remarkable presentation of the report of the Court. My delegation is gratified to learn that under the presidency of Judge Song, the Court continues to make significant progress in fulfilling the aspirations of the framers of the Rome Statute to promote international criminal justice in order to ensure accountability and end impunity in respect of grave crimes of the most serious concern to the international community, in particular genocide, war crimes, crimes against humanity and acts of aggression.

The first Review Conference of the Rome Statute of the International Criminal Court, held in Kampala from 31 May to 11 June, has been hailed as a historic event, as it provided an opportunity to introduce amendments to the Rome Statute to include a definition of the crime of aggression and the conditions under which the Court could exercise jurisdiction with respect to that crime. My delegation applauds the Secretary-General for ably discharging his mandate, conferred under the Rome Statute, to convene the first Review Conference. We also commend all concerned who contributed to the success of the Conference, notably Ambassador Christian Wenaweser of Liechtenstein, who is the President of the Assembly of States Parties, and Ambassador Prince Zeid Ra'ad Zeid Al-Hussein of Jordan, who chaired the special working group on the crime of aggression. We also acknowledge the countless non-governmental organizations and civil society groups that played an important role in mobilizing the participation of people to show interest in the Review Conference.

The Kampala Review Conference offered States parties and non-States parties alike a rare moment to take stock of the Rome Statute system since the holding of the Rome Conference. The challenge ahead is to address in a dispassionate manner some of the lingering issues arising from Kampala and to ensure that there is a common and better understanding of the amendment that was agreed to in Kampala in respect to the crime of aggression, including the role of the Security Council in the determination of an act of aggression, in the absence of which a charge of the crime of aggression might be difficult to sustain. The forthcoming session of the Assembly of States Parties in New York should provide another platform to continue the dialogue with a view to further clarifying the amendment adopted in Kampala.

Ghana supports the need for further improving the interaction and relationship between the Court and the Assembly of States Parties, with due regard for the principle of judicial independence and impartiality. The principle of complementarity, which underpins the Rome Statute, means that the need for capacity-building at the national level must be given top priority as well. While perpetrators of serious crimes must be brought to justice, equal attention must be paid to the need to create conditions to address the root causes of conflicts, including enhancing the rule of law, with the ultimate aim of preventing violent conflicts that tend to foster the crimes the Rome Statute was meant to punish or deter.

I wish to conclude by commending the Secretary-General, supported by the United Nations Legal Counsel, for his continued commitment to promoting cooperation between the Court and the United Nations and for upholding the principle that justice is essential to the maintenance of international peace and security, which are in turn necessary for sustainable development.

We are not about to forget to acknowledge, with our deepest appreciation, the efforts of the Government and people of Uganda in hosting the Review

Conference on African soil, thus underscoring our continent's dedication to the advancement of the rule of law, justice and accountability. African States were instrumental in bringing the Rome Statute into force in significant numbers, and an African country has hosted the first Review Conference.

Going forward, the key challenges will include the promotion of the universality of the Rome Statute and effective international cooperation to strengthen the fight against impunity, which ought to be the collective responsibility of all peoples and States. Ghana hopes and believes that the outstanding issues preventing the opening of an International Criminal Court liaison office in Addis Ababa and greater cooperation between the Court and the continent will be resolved sooner rather than later, to enable African States to lead the effort towards the universality of the Rome Statute, as was envisaged by the Assembly decades ago when it first considered the idea of establishing a permanent international criminal court that left no Member State behind or beyond the reach of justice and accountability.

**Mr. Hernández** (Mexico) (*spoke in Spanish*): Mexico would like to thank the President of the International Criminal Court, Judge Sang-Hyung Song, for the presentation of the Court's sixth annual report (see A/65/313) to the General Assembly.

We welcome the recent accession of four States to the Statute, namely, Bangladesh, Saint Lucia, Seychelles and the Republic of Moldova. There are now 114 States parties to the Rome Statute, which is a clear indication of the Court's universalization.

The year 2010 marks an important step for international criminal justice and for the system built on the Rome Statute. The holding of the first Review Conference and its successful results are proof of this. The adoption by consensus of amendments to the Statute, particularly those related to the crime of aggression, is in itself a success that demonstrates both political will and illustrates the responsible, inclusive and comprehensive participation of delegations at the Conference.

In Kampala, we had the opportunity to reflect on the current situation and the challenges that international criminal justice faces eight years after the entry into force of the Rome Statute. Similarly, we reaffirmed our commitment to the Court with pledges aimed primarily at guaranteeing effective cooperation. It is now up to States parties to implement the Kampala outcomes, thereby strengthening the operation and independence of the Court above and beyond any political considerations. The first Review Conference should be seen as the beginning of a permanent process of evaluation and improvement of the international criminal justice system that allows us to strengthen the Court's work and the provisions of the Rome Statute.

On this point I would like to reiterate my country's belief that the Rome Statute will not be complete until the use of nuclear weapons is classified as a war crime. We will therefore continue to promote that cause in the working group to be established by the Assembly of States Parties during its next session.

Six years have passed since the establishment of the judicial system provided for under the Rome Statute. In spite of the great efforts by the staff of the Court, there is still a long way to go. Nine arrest warrants still remain to be executed, and the challenges in the field are countless. We should not forget that the International Criminal Court will be able to exercise its mandate only if it can rely on the full and effective cooperation of the international community.

My delegation believes it is important to stress that refusal to cooperate with the Court amounts to a clear violation of international obligations under the Rome Statute and, in certain circumstances, the Charter itself. Non-cooperation thus requires that tough measures be taken by the Assembly of States Parties and, in some cases, by the Security Council. In that regard, Mexico considers it urgent to develop mechanisms that can effectively implement the provisions set out in article 87, paragraph 7, of the Statute.

My delegation is convinced that the challenges the Court faces in becoming a role model for justice will be overcome only if we have a solid, efficient and effective institution. Now, almost 10 years since the Court was established, the time has come to assess its institutional operation. Through a constructive and structured dialogue among the Assembly of States Parties and the various bodies of the Court, we should identify options that can improve the governance of the Court and strengthen its institutional framework and judicial independence.

However, I also wish to emphasize that a role model for justice must also be a model in the area of human and financial resources. Rationalizing

expenditures, achieving judicial proceedings that are more effective, efficient and responsive, as well as promoting the transparency and accountability of all the Court's bodies, are measures that will result in better use of the available resources. For these reasons, Mexico calls upon the Court's various bodies and officers to reflect on its real needs and to propose their own internal budget austerity measures, taking into account the financial sacrifices they may entail, as a sign of their willingness to work towards a Court that can carry out its functions efficiently in terms of costs.

More than 60 years have passed since the adoption of the Convention on the Prevention and Punishment of the Crime of Genocide, in which the idea of a permanent international criminal court was first conceived. Today that ideal is a reality. Now it is up to the international community to work together in order to maintain the efficacy, efficiency and integrity of the Rome Statute, while it falls to the Court to establish itself as a role model for justice that makes a meaningful contribution to the prevention of the most heinous. Mexico will support the Court in its efforts.

*The meeting rose at 5.55 p.m.*